

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



24-11-11

TRANSCRIPT OF RECORD.

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Court of Appeals, District of Columbia

OCTOBER TERM, 1905.

No. 1582.

376

*Mae Marshall, only child and heir at Law*

*deceased*  
*of* EMMA J. OVERAND, APPELLANT,

vs.

EDITH A. LANE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED JULY 12, 1905.

# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 1582.

*Mae Marshall, only child and heir at Law*  
*deceased*  
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# In the Court of Appeals of the District of Columbia.

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EMMA J. OVERAND, Appellant, }  
vs. } No. 1582.  
EDITH A. LANE. }

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*a* Supreme Court of the District of Columbia.

EDITH A. LANE, Complainant, }  
vs. } No. 24757. In Equity.  
EMMA J. OVERAND, Defendant. }

UNITED STATES OF AMERICA, } ss :  
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill.*

Filed Jun- 28, 1904.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

EDITH A. LANE, Complainant, }  
vs. } Equity. No. 24757.  
EMMA J. OVERAND, Defendant. }

To the supreme court of the District of Columbia, holding an equity court:

The bill of your complainant, Edith A. (Overand) Lane, respectfully represents as follows:

1. That she is a citizen of the United States and a resident of the District of Columbia; that she is of full age and brings this suit in her own right as hereinafter set forth. That the defendant, Emma J. Overand, is a citizen of the United States and a resident of the District of Columbia; that she is of full age and is sued in her own right as hereinafter set forth.

2. That your complainant was the only child of Edmund D. Overand, lately deceased, by his first marriage; that in the year 1883 the said Edmund D. Overand, then a widower, married again to the defendant, Emma J. Overand, who likewise had been previously married and had a daughter an only child then and still living by her said first marriage, and that there was no issue born of said second marriage of said parties.

2      3. That in the year 1889 the said Edmund D. Overand and wife with their two step-daughters left Brooklyn, N. Y., where they had resided and settled in the city of Washington, in the District of Columbia, the said Edmund D. Overand having obtained a position here as a plate printer in the Bureau of Engraving and Printing receiving as pay for said employment from \$100 to \$125 per month; which said position he continued to hold until the time of his death on the 5th. of August, 1903.

4. That on the 21st. day of May, 1891, the said Edmund D. Overand bought of Charles Gessford and wife for \$5,500, lot numbered 88 in John G. Slater's subdivision of lots in square numbered 917, in the city of Washington, in the District of Columbia, as per plat recorded in Liber 18, folio 43, in the surveyor's office of the District of Columbia, improved by a brick dwelling house numbered 221—8th street, N. E.

5. That said lot purchased as above was transferred by said Charles Gessford and wife, Elizabeth C. Gessford, by deed in fee, a compared copy of which is hereto annexed marked Exhibit "A," and prayed to be read as a part hereof, dated the 21st. day of May, 1891, and recorded the 22nd. day of May, 1891, in Liber 1574, folio 376, to Edmund D. Overand and Emma J. Overand, their heirs and assigns; although the entire consideration for said premises both in cash and in settlement of notes secured by deeds of trust on said property was paid by the said Edmund D. Overand alone.

3      6. That said deed failed to specify or state expressly whether the said grantees were to take and hold said property as tenants in common, as joint tenants or as tenants by the entirety; but your complainant is informed and believes and therefore avers that it was the intention of the parties grantees to the aforesaid deed, (Edmund D. Overand and Emma J. Overand), prior to and at the time of said conveyance that each of them should take and hold a one-half interest in said property absolutely as tenants in common and not as joint tenants or as tenants by the entirety, and that said parties so understood said deed to convey a one-half interest in said property to each of them in such a manner that each of said parties would have the power of disposing of his or her half interest in said property by deed or will and that if either of said parties should die intestate his or her half interest in said property would descend to his or her daughter or heirs at law.

7. Your complainant is informed and believes and therefore avers that said parties grantees were not aware of said failure of said deed to express their real intent and purpose and that said mistake was

not discovered by said Edmund D. Overand nor acquiesced in by him during his life time, and that your complainant did not discover said mistake until after the death of the said Edmund D. Overand when she began to enquire into the property to which she would be entitled as his heir at law.

8. That the said Edmund D. Overand from the time of the purchase of said house until the time of his death on the 5th. of  
4 August, 1903, occupied said house as his home; that since his death, his widow, the defendant, Emma J. Overand has continued to live there refusing to acknowledge your complainant's rights in the premises and now sets up a claim to the entire property by right of survivorship under said deed.

9. That if said defendant should convey or attempt to convey title to the property involved in this cause by deed or otherwise and said property should thereby become vested in a *bona fide* holder for value your complainant would be put to great expense and inconvenience in establishing her rights in the premises and might also thereby suffer irreparable loss and injury.

10. In consideration whereof and because your complainant can have adequate relief in the premises only in a court of equity where matters of this nature are properly cognizable, your complainant therefore prays:

First. That the said Emma J. Overand be made a party defendant to this suit and that a United States writ of subpoena be issued against said Emma J. Overand commanding her to appear and true answer make to the exigencies of this bill.

Second. That a decree may be passed by this honorable court in this cause reforming said deed and vesting a one-half interest in fee in said property in your complainant, subject to the dower interest of defendant, and that the said defendant, or if she refuse or be unable then some other proper person, may be required to execute such deed or other assurance as may be necessary therefor.  
5

Third. That pending the final disposition of this cause the defendant, Emma J. Overand, may be restrained and enjoined from selling, transferring or in anywise disposing of the said one-half interest in said property in this cause involved.

Fourth. That your complainant may have such other and further relief as the nature of the case may require and to the court may seem just and proper.

EDITH A. LANE,  
*Complainant.*

DANIEL W. O'DONOGHUE,  
ARTHUR A. ALEXANDER,  
*Solicitors for Complainant.*

DISTRICT OF COLUMBIA, ss:

I, Edith A. Lane, the complainant in the foregoing bill do solemnly swear that I have read said bill by me subscribed and know

the contents thereof, that the facts therein stated of my own knowledge are true and those stated on information and belief I believe to be true.

EDITH A. LANE,  
*Complainant.*

Subscribed and sworn to before me this 24 day of June 1904.

ALBERT C. WELLS,  
*Notary Public, D. C.*

[SEAL.]

EXHIBIT "A."

|                                       |   |  |
|---------------------------------------|---|--|
| Charles Gessford <i>et ux.</i>        | { | Liber 1574, Folio 376. Recorded<br>May 22, 1891. Deed. |
| to<br>Edmund D. Overand <i>et ux.</i> |   |  |

This indenture made this twenty-first day of May in the year of our Lord one thousand eight hundred and ninety-one (1891) by and between Charles Gessford and Elizabeth C. Gessford his wife of the city of Washington, District of Columbia, parties of the first part, and Edmund D. Overand and Emma J. Overand his wife of the same place parties of the second part, witnesseth: That the said parties of the first part for and in consideration of fifty-five hundred — (\$5,500) lawful money to them in hand paid by the parties of the second part the receipt of which before the sealing and delivery of these presents is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the parties of the second part their heirs and assigns forever the following described land and premises situated lying and being in the city of Washington, in the District of Columbia, and distinguished as and being lot numbered eighty-eight (88) in John G. Slater's subdivision of lots in square numbered nine hundred and seventeen (917) as said subdivision is recorded in the office of the surveyor of the District of Columbia in Book 18 page 43 subject however to a deed of trust from Charles Gessford and wife to John S. Swormstedt and Robert E. Bradley dated

7 May 19, 1891, at 3 years with interest at 6 % payable semi-annually for the sum of \$3,000, together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining and all the estate, right, title, interest, and claim either at — or in equity or otherwise however of the parties of the first part of, in, to or out of the said land and premises: to have and to hold the said land and premises and appurtenances unto and to the only use of the parties of the second part their heirs and assigns forever.

And the said parties of the first part for themselves and for their and each of their heirs executors and administrators do hereby covenant and agree to and with the parties of the second part their heirs.



and assigns that they the parties of the first part and their heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the parties of the second part their heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein by, from, under and through them or either of them. And further that the parties of the first part and their heirs shall and will at any and all times hereafter upon the request and at the cost of the parties of the second part their heirs and assigns make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said land and premises and appurtenances unto the parties of the second part their heirs or assigns as the parties of the second part their heirs or assigns or their counsel learned in the law shall advise devise or require.

8 In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

CHARLES GESSFORD. [SEAL.]  
ELIZABETH C. GESSFORD. [SEAL.]

Signed, sealed and delivered in the presence of  
CLARENCE L. ALEXANDER.

DISTRICT OF COLUMBIA, *To wit* :

I, Clarence L. Alexander, a notary public in and for the said District of Columbia do hereby certify that Charles Gessford and Elizabeth C. Gessford his wife parties to a certain deed bearing date on the twenty-first day of May, A. D. 1891, and hereto annexed personally appeared before me in the said District of Columbia, the said Charles Gessford and Elizabeth C. Gessford his wife being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed; and the said Elizabeth C. Gessford wife of the said Charles Gessford being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me acknowledged the same to be her act and deed and declared that she had willingly signed, sealed and delivered the same and that she wished not to retract it.

Given under my hand and official seal this twenty-first (21) day of May, A. D. 1891.

CLARENCE L. ALEXANDER,  
*Notary Public, D. C.* [NOTARIAL SEAL.]

Filed Sep. 6, 1904.

In the Supreme Court of the District of Columbia.

|                             |                         |
|-----------------------------|-------------------------|
| EDITH A. LANE, Complainant, | } In Equity. No. 24757. |
| vs.                         |                         |
| EMMA J. OVERAND, Defendant. |                         |

The defendant, Emma J. Overand, for answer to so much and such parts of complainant's bill of complaint, as she is advised is necessary and material for her to make answer to, answering says:—

1, 2 and 3. Answering the first, second and third paragraphs of complainant's said bill, this defendant says that the statements therein contained are substantially true, and are admitted, except as to the date when the said Edmund D. Overand and this defendant left the city of Brooklyn, N. Y.; defendant has no definite recollection of said date, and leaves complainant to make such proof thereof as she may deem material.

4. Answering the fourth paragraph of complainant's bill of complaint, this defendant says that on or about the 21st day of May, 1891, her then husband, the said Edmund E. Overand and herself, purchased of Charles Gessford and wife, for the sum of \$5500, the lot, house and premises in this paragraph of complainant's said bill described; that of said price, the cash payment of one thousand  
 10 dollars was made, and part of the balance thereof, was secured by the joint and several promissory notes of defendants said husband and herself, bearing even date with said deed, and payable as follows, to wit: 33 notes of \$40 each, payable in from 1 to 33 months; the residue of said purchase money was represented by an encumbrance then upon said property. That the cash payment of \$1000 was paid entirely with her, the defendant's money, which constituted part of her separate estate, and was hers at the time of her marriage with said Overand, and was not, nor was any part thereof derived from, under or through him, the said Overand, in any manner whatsoever; that after the purchase of said property, defendant's said husband, the said Overand, paid and allowed unto her, of his monthly wages, the sum of \$75; with this sum she was to pay the household expenses, and clothe herself. That shortly after the purchase of said house and premises, she commenced to take boarders or roomers, and so continued to do until her husband's death. That with the money derived from the monthly payments of her husband, as aforesaid, and such sums as she was able to make and save in manner as aforesaid, over household expenses, etc., she paid all of the indebtedness represented by said promissory notes, so made by her husband and herself, as aforesaid.

5. Answering the fifth paragraph of complainant's said bill of complaint, defendant says that she admits that the compared copy of the deed made by the said Charles Gessford and wife dated and recorded as stated in said paragraph, is a true and correct copy of said deed; this defendant denies that the entire consideration  
11 for said premises both in cash and in settlement of notes secured by deed of trust on said property was paid by the said Edmund D. Overand alone; said statement is wholly untrue, and defendant avers that the same was paid for in the manner and with the funds provided in part by her, as stated in the fourth paragraph of her answer, to which she refers and makes it a part of her answer to this paragraph, as fully as though set out *in hæc verba*. In so far as the statements in this paragraph of complainant's bill contradict or vary from the statements made in this her answer, defendant says they are untrue in fact, and will require strict proof of each and all of them.

6. Answering the sixth paragraph of complainant's said bill of complaint, this defendant says that the limiting clause in the premises of said deed is in the following language, to wit:—"have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed, and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the parties of the second part their heirs and assigns forever," and in the habendum, "to have and to hold the said land and premises and appurtenances unto and to the only use of the parties of the second part, their heirs and assigns forever." That the meaning and interpretation of said limiting clause, and of said habendum, is not a question of fact, but a question of law for the court. Defendant says, upon information and belief, that by the terms of said limiting clause, and of said habendum, the grantees took either a joint tenancy  
12 or a tenancy by the entirety, in either of which events, the survivor is entitled to the fee in said property, by right of survivorship. This defendant denies that it was the intention of her husband and herself, the grantees in said deed, prior to and at the time of said conveyance, that each of them should take and hold a one-half interest in said property, absolutely, and not as joint tenants or as tenants by the entirety, and that said parties understood said deed to convey a one-half interest in said property to each, in such a manner that each of said grantees should have the power of disposing of his or her said half interest in said property by deed or will; and if either of said parties should die intestate, that his or her half-interest would descend to his or her daughter or heirs-at-law. Such averment is wholly untrue, and defendant will require of complainant strict proof of each and every averment in said paragraph contained; on the contrary the truth is that prior to the purchase of said property, it was understood and agreed by both herself and her husband, they said property should be conveyed to them as it was conveyed, so that in the event of the death of either, the survivor should take the entire interest in said property.

7. Answering the seventh paragraph of complainant's said bill of complaint, this defendant denies that the parties grantees were not aware of the failure of said deed to express its true intent and purpose, and that said mistake was not discovered by the parties to said deed; defendant says that said statement is wholly untrue, and she will require of complainant strict proof of each and every  
13 averment in said paragraph of said bill contained; on the contrary she states the truth to be that there was no mistake in said deed; that the said Edmund D. Overand well understood and knew, both before said deed was executed and delivered, and afterwards, what its terms and provisions were; she avers that said deed was fully acquiesced in by her husband, the said Edmund D. Overand, during his life, and that for fear the deed did not accomplish what he and she understood, and what both desired at the time of the purchase of said property, he, the said Edmund D. Overand executed in due form of law, a will by which he devised unto this defendant all of his property. That said will bears date on the 19th day of Nov., 1897, and is filed with the register of wills in the probate court for safe keeping; it not being necessary to have the same admitted to probate and record, as this defendant took decedent's entire estate by right of survivorship. This defendant, answering further says that she has no information as to when complainant discovered what she alleges was a mistake in the terms and provisions of said deed, as to the effect of the limiting clause and the habendum in said conveyance contained; and she leaves complainant to make such proof of this averment as she may deem to be material.

8. Answering the eighth paragraph of complainant's said bill of complaint, this defendant says that she admits that the averments in the 8th paragraph of complainant's said bill are substantially true, and are therefore admitted. She avers further that she is informed and believes, and therefore states that she has the legal title to all of said real estate, by survivorship, and that complain-  
14 ant has no interest in or right to the use and enjoyment of the same or any part thereof, in any manner whatsoever.

9. Answering the ninth paragraph of complainant's said bill, this defendant says that she is advised and therefore avers, that the statements in this paragraph of said bill contained are conclusions of law, and not statements of fact, and that it is not necessary or material for her to make answer thereto, other than to say that she has no present purpose of selling or disposing of said real estate; and she leaves complainant to make such proof of the averments in said paragraph of said bill contained, as she may deem material.

Having fully answered said bill, this defendant prays to be hence dismissed, with her reasonable costs in this behalf most wrongfully incurred.

EMMA J. OVERAND.

B. F. LEIGHTON,  
*Solicitor for Defendant.*

DISTRICT OF COLUMBIA, *To wit:*

I, Emma J. Overand, being first duly sworn, on oath say that I have read the foregoing bill by me subscribed, and know the contents thereof; that the facts therein stated of my own knowledge are true, and those stated upon information and belief, I believe to be true.

EMMA J. OVERAND.

Subscribed and sworn to before me, this seventh day of July, A. D. 1904.

C. CLINTON JAMES,  
*Notary Public, D. C.* [SEAL.]

15

*Replication.*

Filed Sept. 14, 1904.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

|                             |                          |
|-----------------------------|--------------------------|
| EDITH A. LANE, Complainant, | } No. 24757, Equity Doc. |
| <i>vs.</i>                  |                          |
| EMMA J. OVERAND, Defendant. |                          |

The complainant joins issue on the answer of the defendant, Emma J. Overand, filed in the above entitled case.

DANIEL W. O'DONOGHUE,  
ARTHUR A. ALEXANDER,  
*Solicitors for Complainant.*

*Deposition of O. W. Reed.*

Filed Feb. 6, 1905.

In the Supreme Court of the District of Columbia.

|                  |                      |
|------------------|----------------------|
| EDITH A. LANE    | } Equity. No. 24757. |
| <i>vs.</i>       |                      |
| EMMA J. OVERAND. |                      |

Interrogatories to be Propounded to O. W. Reed, Witness for the  
Complainant, of Amarillo, Texas.

- 16      1. State your full name, age, and present address?  
          2. State your relationship if any to the parties at issue in this  
cause and how long you have known them?  
          3. State if you ever lived in the same house or houses with the

parties at issue in this cause and if so, when, where, location of houses, and for how long?

4. If in answer to interrogatory No. 3 you state that you were living with Mr. Overand on or about May 21st 1891, when premises No. 221 8th street N. E. in Washington city, D. C., were purchased please state fully all that you know concerning the purchase, the transfer and the payment of said premises setting forth what was said and understood by Mr. Edmund J. Overand, by Mrs. Emma J. Overand and by yourself, at the time, stating fully all that was said by anyone of you in the presence of the others in reference to the purchase of said premises and when and where the same transpired?

5. What interest did Mr. and Mrs. Overand each understand that each received under the deed to said premises and what did each of them understand would become of his or her interest after his or her death?

6. State what was said between Mr. and Mrs. Overand as to a provision for the complainant Edith A. Lane out of the said premises in case of Mr. Overand's death, stating when, how often and where the same occurred?

7. State what were the relations existing between Mr. Overand and his daughter Edith A. Lane while you knew them?

8. State what were the relations existing between Mrs. Overand and her step-daughter Edith A. Lane while you knew them?

17 9. State what were the relations existing between Mr. and Mrs. Overand while you knew them and if there were quarrels or disagreements between them, state the cause or causes of the same and what they were about and what would be said or take place?

10. Do you know, or can you set forth any matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

DANIEL W. O'DONOGHUE,  
ARTHUR A. ALEXANDER,  
*Solicitors for Complainant.*

*Defendant's Objection to Interrogatories & Cross-interrogatories to be Propounded to O. W. Reed.*

Filed Jan. 20, 1905.

In the Supreme Court of the District of Columbia.

|                             |   |                    |
|-----------------------------|---|--------------------|
| EDITH A. LANE, Complainant, | } | No. 24756. Equity. |
| vs.                         |   |                    |
| EMMA J. OVERAND, Defendant. |   |                    |

Comes now the defendant, Emma J. Overand, by B. F. Leighton, Esq., her solicitor, and objects — the fourth, fifth, sixth and ninth

interrogatories to be propounded by complainant to the  
18 witness O. W. Reed, a witness on behalf of complainant,  
because she says the information sought to be obtained by  
each of said interrogatories, is irrelevant and immaterial; and  
further, that what was said or understood by the defendant and her  
husband and the witness, was merged in the deed itself, and it is  
incompetent to add to or vary its terms and provisions or legal effect,  
by oral testimony; and what the witness understood as to said deed  
is immaterial; that what the defendant and her husband under-  
stood is a matter of inference and not the statement of a fact, and is  
for that reason incompetent; that what defendant and her husband  
understood as to the interest each received under the said deed, as  
sought to be elicited by the fifth interrogatory, is a conclusion drawn  
from statements made by the parties, or facts which transpired at  
the time of the execution of the deed, and is for that reason incom-  
petent; further, the understanding of the parties could not alter or  
vary the legal effect of the instrument.

She further objects to the sixth interrogatory, because conversa-  
tions occurring between defendant and her husband, after the exe-  
cution of the deed, cannot alter or vary the terms of said deed, or its  
legal operation and effect.

Without waiving either of said objections, defendant propounds to  
said witness the following cross interrogatories:

Cross interrogatory No. 1. Where have you been living since  
leaving Washington, and in what business have you been en-  
gaged?

19 Cross interrogatory No. 2. Were you in Government em-  
ploy while living in Washington? If yes, state whether you  
left such employment voluntarily, or were discharged; if the latter,  
for what cause?

Cross interrogatory No. 3. If in answer to interrogatory No. 4, you  
state that you were present at the execution of said deed, state who  
else was present, where the deed was executed, who drew it, whether  
it was read by defendant or her husband before the purchase was  
closed; or whether it was read aloud by any one in their presence,  
and to whom it was delivered; state how the purchase money was  
paid; whether in cash, or by check, and who paid it; whether the  
money paid belonged to the defendant or her husband, if you know.  
Had you studied law at the time the deed was executed; if yea,  
when and how long? Did you not advise defendant and her hus-  
band to have the deed drawn in such a way, that upon the death of  
one of the parties, the survivor would take title to the entire prop-  
erty?

Cross interrogatory No. 4. If in answer to complainant's fifth in-  
terrogatory, you state what the defendant and her husband under-  
stood that each received under said deed, state how you know they  
understood as you state; if from what was said, give the exact  
language of each; state at what time it was said, and where, and

who were present ; whether at the time the deed was delivered, or before ; how the conversation arose, and who started it.

Fifth cross interrogatory. If in answer to the sixth interrogatory, you state what was said by defendant and her husband as to  
 20 a provision for complainant, give the exact language of each, state who was present at the time when it occurred ; whether any other person was present at the time, and who ; when such conversation occurred ; whether before the deed was written, or afterwards, and who commenced the conversation.

Sixth cross interrogatory. If in answer to the eighth interrogatory, you state that the relations between the defendant and plaintiff were not pleasant, state from what facts or circumstances you were able to say they were not pleasant ; and whether such unpleasantness as existed, was not caused by plaintiff's remaining out of the house late at night, and keeping improper company. State all you know upon this subject.

Seventh cross interrogatory. If in answer to the ninth interrogatory you state that the defendant and her husband quarrelled or disagreed, state whether or not such quarrels took place in your presence, or whether what you state is derived from what others said ; and if you witnessed any such quarrels, state exactly what occurred, and what was done by each of said parties ; and who was present, giving time and place.

B. F. LEIGHTON,  
*Solicitor for Defendant.*

In the Supreme Court of the District of Columbia.

|                  |   |                    |
|------------------|---|--------------------|
| EDITH A. LANE    | } | Equity. No. 24757. |
| vs.              |   |                    |
| EMMA J. OVERAND. |   |                    |

21 *Answers and Depositions of O. W. Reed, of Amarillo, Texas, Witness for Complainant, to the Accompanying Interrogatories.*

Answer to Interrogatory No. 1.

Orlando W. Reed ; 44 years ; 510 Polk St., Amarillo, Texas.

Answer to Interrogatory No. 2.

I am no relation. First met them in the winter of 1890 and 1891.

Answer to Interrogatory No. 3.

I was living in the same house,—boarding with the family,—from about November 1, 1890 to about July 15, 1891 ; during that time we lived in house # 628 East Capitol St. and 221 8th St., N. E. Washington, D. C.



## Answer to Interrogatory No. 4.

During the time I was living with the family of Mr. and Mrs. Overand they counseled with me in relation to the investment of some money they had, and I advised them to purchase a home and pay down what they could and pay the balance in monthly installments and stop paying rent. They approved of the idea, but said that as they would be compelled to depend upon the wages made by Mr. Overand as a plate printer in the Bureau of Printing and Engraving to keep up the payments of the monthly installments, there would be the chance of his losing his situation or being taken sick. I then suggested that they take stock in a building and loan association and borrow the balance of money needed on the  
22 certificate,—as it should not be forfeited on the failure to pay promptly. This they decided to do and Mr. Overand gave me \$30.00 to take out 30 shares of stock for him in his name, which I did, and gave him the certificate.

Afterwards they become dissatisfied with the building and loan stock and decided to buy a house as I first suggested.

Mrs. Overand would search for houses during the day, and at night Mr. and Mrs. Overand and I would go and examine them, and they finally settled on the house, # 221, Eighth St. N. E. and decided to buy it; but then the question arose as to whether the deed should be in his name or hers, and it was finally decided that the house should be in their names jointly, as I informed Mrs. Overand that she would be entitled to the entire house as a homestead in case Mr. Overand died, and after her death the place would go half to her daughter and half to Mr. Overand's daughter.

Mr. Overand and I went one night to the home of the man who built and owned the house; his agent was present and made out the papers. I examined them and Mr. Overand signed the notes, paid the man the amount to be paid down and paid the last two installment notes. This is as exact and complete as I can state the transaction after fourteen years, as I must do so entirely from memory.

## Answer to Interrogatory No. 5.

I explained that in case of a joint deed they would own the property jointly, and in case Mrs. Overand died first, Mr. Overand by courtesy could occupy the place as a homestead as long as he lived, and when he died it would be divided equally between the heirs of each, and in case Mr. Overand died first, the same rule would apply.

23

## Answer to Interrogatory No. 6.

After we had moved into 221, 8th St. N. E., Mrs. Overand frequently endeavored to persuade Mr. Overand to deed the place to her, or have it put in her name, claiming that in case he died Edith would get half of the place and she would have no home,—and would call on me to substantiate her statement, which I refused to

do, as I claimed no one but herself or her own act would bar her of her homestead. I cannot state how often, nor the exact date that these conversations occurred.

Answer to Interrogatory No. 7.

The relations between Mr. Overand and his daughter were pleasant and affectionate, much more so when Mrs. Overand was absent than when present.

Answer to Interrogatory No. 8.

Edith was a girl of about fourteen or fifteen years, and was rather timid, and she was always in fear of incurring the displeasure of Mrs. Overand, who was very strict with her. I have seen her send the girl to her room at noon and make her stay there until the next morning, because she did not put the salt cellar on the table.

Answer to Interrogatory No. 9.

This is difficult,—Mr. Overand was afraid of her; he was afraid to directly disagree with her; he never spoke an angry word to her in my presence; he couldn't; she wouldn't give him a chance; she done all the talking. Anything would start her going, but when he

24 come home she always had a complaint to make about Edith or her son-in-law, or Lockwood, or Bilyen, or Mr. and Mrs. Green, (other roomers at 628 E. Capitol St.), and keep it up for an hour and wind up by berating him because he did not have spunk enough to take up her quarrels. He kept his mouth shut and said nothing. She would start up a complaint to him over some trivial matter, and become so angry and abusive that we would all have to leave the room. All that was said I could not tell, for I have heard so many quarrels between them and paid no attention to them, more than I was compelled to.

Answer to Interrogatory No. 10.

I can say no more. I knew the parties well and our relations have always been pleasant and I have never had a cross word or disagreement with either of them and regret that I must make public the matters I have testified to.

*Answers to Cross Interrogatories Propounded to said Witness by Defendant in said Cause.*

Answer to Cross Interrogatory No. 1.

I left Washington in March, 1894, detailed as a special pension examiner, to work in the field. I went to Newark, N. J., and worked from there for sometime. I then went to New York city, N. Y., and worked from there a while. I then went to Ellenville, Ulster Co.,

N. Y., and worked from there until Feb., 1895, when I went to Middletown, Orange Co., N. Y. I then asked to be transferred to some other point, which the department refused. I at once mailed  
25 all papers in my valise to the Commissioner of Pensions at Washington, D. C. I took my stationery trunk to the *the* Gov't building in Poughkeepsie, N. Y., and deposited it there in charge of the pension board of medical examiners, notified the Commissioner of Pensions where his property could be found, and that my future P. O. address would be Taylorville, Ill. I then went to New York city, from there to Philadelphia, where I stayed some weeks,—and while there I was informed by the Commissioner, under date of March 25, 1895, that my services were no longer required. I then went to Chicago, Ill., from there to Joliet, Ill.; back to Chicago, Ill., during which time I was visiting. I then went to Taylorville, Ill., where I purchased a daily paper and run it for thirty days. Went to Springfield and wrote my brother to run the paper. Then I went to St. Louis, where I was prospecting. Then went on the road as a traveling salesman for the St. Louis Leather Company and travelled for them through Illinois, Iowa, Missouri, Arkansas, Louisiana, Kansas, Oklahoma, Indian Territory, Texas, New Mexico, Arizona and Colorado. I quit in May, 1901, and was sick and unable to do anything for near two years, during which time I was in Fort Worth, Texas. In December, 1902, I went to Dallas, Texas, where I stayed until January 10, 1903, when I went to Paris, Texas, and was employed in the Famous shoestore until March 19, 1903, when I came to this city, and have since been in the employ of the Union shoe store as buyer, bookkeeper and salesman.

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## Answer to Cross Interrogatory No. 2.

I was in the service of the U. S. Government and was discharged for insubordination.

## Answer to Cross Interrogatory No. 3.

The owner, his agent, Mr. Overand and myself. The papers were read by me and by Mr. Overand as I recollect it, and was drawn by the agent. I think money was paid by check. E. D. Overand paid the check or money. I don't know whose money it was; they always spoke of it as money they had, and all I could say about where they got it would be supposition.

I had studied law and was admitted to the bar by the supreme court of Illinois at Mt. Vernon, Ill. I was examined before the appellate court in March, 1888, at which time I showed a service of two years and two months in the office of J. C. McBride of Taylorville, Illinois.

I did not advise the parties to have a deed drawn in a way that when one died the other would take the whole.

## Answer to Cross Interrogatory No. 4.

I am making statements from what they said to me and to each other in my presence and what I said to them as near as I can remember. I cannot give exact words or dates, but it was before and after the execution of the papers as Mrs. Overand was not present when the papers were executed that I speak of. I never knew of any papers being executed when Mrs. Overand was present. As to how the conversation arose or who started it, I do not know.

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## Answer to Cross Interrogatory No. 5.

I cannot give the exact conversation about Edith's interest, but it was always brought forward by Mrs. Overand; the exact language I would not undertake to state after so long a time, but it was both before and after the execution of the papers, and no one was present but Mr. and Mrs. Overand and myself, after the execution of the papers.

## Answer to Cross Interrogatory No. 6.

I know the relations between the plaintiff and defendant were not pleasant from observations, from what I heard and their actions. The defendant never, to my knowledge, spoke a kind word to the plaintiff, was continually sending her, off to bed in the middle of the day for some trivial offense, and it was not caused by the plaintiff remaining out of the house of night, for she never did, to my knowledge, as I was in the house every night, and when I did go out I did not leave before 8 o'clock p. m. and I know the plaintiff was never out of the house to my knowledge and she did not keep bad company, for she was never allowed any company at all by the defendant.

## Answer to Cross Interrogatory No. 7.

The quarrels between the defendant and her husband took place in my presence, and my knowledge is not derived from hearsay, and I have repeatedly heard Mrs. Overand tell her husband that she would never have married him if she had not believed at the time  
28 he was sure to die, and she would get his life insurance money, as the doctor told her he was sure to die in a few days, and she knew he had his life insured.

Mr. and Mrs. Green heard this as well as I, and I think Chas. Lockwood and Bilyen did also. He kept quiet all the time and never answered her. This occurred a number of times. I cannot give dates or recall who else were present, if any one, but it occurred during the time I lived with the family.

O. W. REED.

17

THE STATE OF TEXAS, }  
County of Potter. }

I, Lon D. Marrs, notary public in and for Potter county, Texas, do hereby certify that the foregoing answers of O. W. Reed, the witness before named, were made before me and were sworn to and subscribed before me by the said witness on the 31st day of January, 1905, A. D. 1905.

In testimony whereof, witness my hand the day and date last above written.

[SEAL.] LON D. MARRS,  
Notary Public, Potter County, Texas.

29 *Depositions (7) on Behalf of Complainant.*

Filed Feb. 9, 1905.

In the Supreme Court of the District of Columbia.

EDITH A. LANE, Complainant,  
*vs.*  
 EMMA J. OVERAND, Defendant. } No. 24757. In Equity.

WASHINGTON, D. C.,  
FRIDAY, *January* 6, 1905—3 o'clock p. m.

Met pursuant to notice at the office of Daniel W. O'Donoghue,  
Esquire, Century building, Washington, D. C.

Present: Daniel W. O'Donoghue, Esquire, on behalf of the complainant, and B. F. Leighton, Esquire, on behalf of the defendant.

Whereupon, LAWRENCE F. NOLAN, a witness on behalf of the complainant, after being first duly sworn, was examined and testified as follows:

By Mr. O'DONOGHUE :

Q. Mr. Nolan, I show you a copy of the deed from Charles Gessford and wife to Edmund D. Overand and wife, recorded in Liber 1574, folio 376, and marked Exhibit A, and attached to the bill filed in this case, and ask you if that is a true copy of the deed recorded in the recorder of deeds' office of the District of Columbia? A. Yes, sir.

Q. Have you compared that with the original? A. Yes, sir.

Mr. O'DONOGHUE: That is all.

LAWRENCE F. NOLAN.

Subscribed and sworn to before me, this 21st day of January,  
A. D. 1905.

JESSE C. ADKINS, *Examiner.*

Mr. O'DONOGHUE: I offer this deed in evidence.

Whereupon, EDITH A. LANE, the complainant, a witness in her own behalf, after being first duly sworn testified as follows:

By Mr. O'DONOGHUE:

Q. You are the complainant in this case? A. I am.

Q. What was your father's name? A. Edmund D. Overand.

Q. When was he married to the defendant in this case, Mrs. Emma J. Overand? A. In 1883.

Q. Is she your mother? A. No.

Q. You are a child by a previous marriage? A. Yes.

Q. Had Mrs. Overand been married previously? A. Yes.

Q. Had she any children by the previous marriage? A. Yes.

Q. How many? A. One.

Q. A daughter? A. Yes.

Q. Is she living? A. Yes.

Q. Had your father and step-mother any children by their last marriage? A. No.

Q. And your father died when? A. In 1903.

Q. What month? A. The fifth of August.

Q. Where did your father and step-mother reside when they were married? A. In Brooklyn, New York.

Q. When did they come to the city of Washington to reside? A. In 1889.

Q. How long did they reside here? A. Up to the present time.

Q. Why did your father come to the city of Washington? A. To get a better position in the Government here.

Q. Where did he get a better position? A. In the Bureau of Engraving and Printing.

Q. How much a month? A. About \$125.

Q. How long did he hold that? A. Up to the time of his death.

Q. What was his trade? A. Plate printer.

Q. Where did they live on coming to Washington? A. They first lived at 631 2d street, northeast.

Q. How long did they reside there? A. Not quite a year, I don't think.

Q. Then where did they move? A. They moved to 628 East Capitol street.

Q. Did they keep house there on East Capitol street? A. Yes.

Q. How long did they live there? A. I don't think more than a year.

Q. Then where did they move? A. 221 8th street, northeast.

Q. Were they boarding in these two previous places? A. No, keeping house.

Q. Did they keep house in the last place? A. Yes.

Q. Did they move into this house, 221 8th street, that is involved in this litigation, before or after it was bought? A. After it was bought.

Q. Do you or do you not recollect any of the circumstances surrounding the purchase of these premises? A. No, I don't remember.

Q. How old are you now? A. I am 28.

Q. Did you ever hear your step-mother and father discuss the ownership of this property or the purchase of it?

33 Mr. LEIGHTON: The question is objected to as incompetent and irrelevant, and because parol evidence cannot be introduced to contradict a deed, and because such evidence is in violation of the statute of frauds.

Mr. O'DONOGHUE: I respectfully submit that the law is otherwise, and that this evidence is admissible?

A. Yes.

Q. What did you hear them say?

Mr. LEIGHTON: I make the same objection.

A. That they each owned half, that each had a half interest in the house.

Q. Did they ever discuss or say anything about who would get this property after either one of them died.

Mr. LEIGHTON: I make the same objection.

NOTE.—It was here agreed by counsel for complainant and defendant that this objection should apply to all this line of evidence of this witness.

A. Yes.

Q. What did your father say? A. Father thought that I should get his half of the house when he died.

Q. What did your step-mother say? A. She thought that she would just get her half.

Q. Did your step-mother ever speak about having the property made over entirely to her or not? A. Very often she did.

Q. What would she say? A. She wanted it made over entirely in her name.

Q. Would your father agree to this or not? A. No, never agreed to it.

34 Q. Did he object? A. Yes.

Mr. LEIGHTON: This question is further objected to as leading.

By Mr. O'DONOGHUE:

Q. Were you living with your father and step-mother when they came to the city of Washington? A. Yes.

Q. You were living with them when they moved in 221 8th street northeast, in 1891? A. Yes.

Q. How long did you continue to live there with them? A. Until 1894.

Q. Where did you go to reside then? A. I went to Mr. Miller's to board there.

Q. Why did you go to Mr. Miller's to board? A. Because it was unbearable at my home, my step-mother made it disagreeable for me to stay there.

Q. How long did you board at Mr. Miller's? A. A little over a month, two months.

Q. Where did you go then? A. Came home again.

Q. How long did you stay at home then? A. About a year then.

Q. What year was this? A. 1895.

Q. Where did you go then? A. I went away to board with a Mrs. Test.

35 Q. Why did you leave home then? A. For the same reason that I left before.

Q. How long did you stay away then? A. I don't remember just how long I staid that time.

Q. About how long? A. I don't think it was more than a year.

Q. And when did you come home again? A. I came home in January when my father lost his place.

Q. What year was that? A. It was in 1896 or in 1897, I can't remember just which.

Q. How long did you remain home then? A. I didn't get back again.

Q. Staid away until your father died? A. Yes.

Q. Why did you go away each one of these times? A. Because she made it so disagreeable that I couldn't stay at home.

Q. To whom do you refer when you say "she"? A. My step-mother.

Q. Who lived in the house with you on 8th street? A. My father and step-mother, and her daughter and husband for a while.

Q. And yourself? A. Myself.

Q. Were you working during this time or not? A. Yes.

36 Q. Where were you working? A. In the Bureau of Engraving and Printing.

Q. When did you start to work in the Bureau of Engraving and Printing? A. In August, 1894.

Q. How much money did you receive? A. About \$32 a month.

Q. Did you or did you not pay board when you left the house for these places? A. I paid my board at these places.

Q. While you were at home did you pay board? A. I paid board every day I was at home.

Q. To whom did you pay board? A. I paid it to my step-mother.

Q. Did you ever pay it to your father? A. No.

Q. Did he ever request it of you? A. No.

Q. Did he ever relieve you from paying it? A. No.

Q. On no occasion? A. No.

Q. Did he ever say anything at all on the question of you paying board? A. Only the first two weeks that I went to work he said that I need not pay board for those two weeks; she was not at home.



at that time, and when she came home she made me pay it for the time she was away that he said I need not pay for.

Q. Did you or did you not ever hear your father discuss making any provision for you in case of his death before your step-mother? A. No, I never did.

Q. When did you first discover the construction which might be put upon this deed by which this property was deeded to your father and your step-mother? A. Not until after his death.

Q. Did your father to your knowledge ever know of that construction?

Mr. LEIGHTON: Objected to as leading, in addition to the other objection.

A. No.

Q. How often did you hear your father and your step-mother discussing the question of this property involved in this suit? A. From the time they bought the house until he died.

Q. And was this discussion a friendly and peaceable discussion or not? A. Not at all.

Q. What was the nature of it? A. She wanted him to make the house over entirely to her, and he remarked what would I get if he did, and she said whatever she chose to give me.

Q. Did he then refuse or not? A. He always refused to make it over entirely to her.

Q. And did he or did he not make any statements in her presence as regards providing for you after his death? A. I don't know if he did; I don't think he did.

Q. I mean, do you remember hearing him make any such remark? A. No.

Q. What were the relations existing between your father and your step-mother? A. Well, they were not very friendly.

Mr. LEIGHTON: Objected to as irrelevant and immaterial.

Mr. O'DONOGHUE: Who had the stronger mind or character of the two?

Mr. LEIGHTON: Same objection.

A. My step-mother did.

Q. Of what nature was she?

Mr. LEIGHTON: Same objection.

A. She exerted a great deal of influence over him.

Q. I mean what was her temperament? A. Well, I would not know what to call it—very ugly.

Q. What were the relations existing between you and your father during his life up to the time of his death?

Mr. LEIGHTON: Same objection.

A. Always on the best of terms, I think.

Q. What were the relations between you and your step-mother?

A. We always—I don't know just how to express myself—we were anything but friends.

Q. How did she treat you when you were living in the house with them?

Mr. LEIGHTON: Same objection.

A. She treated me so that I could not live at home, just about as bad as she could.

39 Q. When you first left home do you remember the cause, the immediate cause of your leaving? A. Yes, I remember that it was in the morning, and she refused to get any breakfast until I got out of the house; I had to go down town and get breakfast, and find a place to board that day.

Cross-examination.

By Mr. LEIGHTON:

Q. When did these unpleasant relations between yourself and your step-mother first commence? A. From the time that I lived with her, never any other way.

Q. From the time of her marriage of your father to her? A. Yes.

Q. Did you live with them in Brooklyn when they were first married? A. No, I lived with an aunt then.

Q. You did not live with them when they were first married? A. No.

Q. How long was it after they were first married that you commenced to live with them? A. I think about two years.

Q. During all the time they lived in Brooklyn? A. Yes.

Q. You did not live with them until they came here to live? A. Yes, I lived with them in Brooklyn.

40 Q. How long did they live in Brooklyn after they married? A. About six years; they were married in 1883, and came here in 1889.

Q. And you lived with them in Brooklyn about two? A. Yes.

Q. And your unpleasant relations commenced as soon as you went to live with them? A. Yes.

Q. And they continued to grow more acute until you left home? A. Yes.

Q. You are 28 now? A. Yes.

Q. At the time of their marriage how old were you? A. About seven years.

Q. And they lived in Brooklyn six years, so you were thirteen years of age when they came here. Is that it? A. Yes.

Q. In what way did her feeling towards you manifest itself while they were in Brooklyn? A. I was made to do all the work.

Q. The family was keeping house? A. I was not treated like one of the family at all.

Q. Did your father have any other children by his first wife except you? A. Yes.

Q. Are they living? A. No.

41 Q. You are the only surviving result of that first marriage?  
A. Yes.

Q. Did your step-mother make you do the work while you were living in Brooklyn? A. Yes.

Q. Allow you to go to school? A. Yes.

Q. When you were out of school she kept you at work? A. Yes.

Q. At what? A. Housework.

Q. Was there anybody in the family except your father, her and yourself? A. Her daughter.

Q. Is her daughter now living? A. Yes.

Q. How old is she? A. She is 32.

Q. Did the daughter work too? A. Not very much.

Q. This was the first piece of property that your father owned in the city—221 8th street? A. Yes.

Q. Did not have any property by his first wife? A. No.

Q. Did not have any at the time he married this woman? A. No.

Q. After he purchased the house 221 8th street, did she  
42 keep boarders or roomers? A. No; she kept roomers for a while, about a year.

Q. Is that all? A. That is all that I remember.

Q. At the other places that she lived, did she keep boarders or roomers? A. A few years; in the one house she did, on East Capitol street; on 2d street she did not keep any.

Q. The house was not large enough, was it? A. No.

Q. You say she only kept roomers in the 8th Street house for about a year. Is that what you mean to say? A. Yes.

Q. You got a place in the Bureau of Engraving and Printing?  
A. Yes.

Q. You were about 18 then? A. Yes.

Q. And after you got that place you did not live at home much?  
A. No.

Q. You left home and did not reside there until after you got that place until your father died? A. I did a short while at a time.

Q. Once in a while you would go home? A. Yes.

Q. The cause of your absence from home was because you could not get along with your step-mother? A. Yes.

43 Q. What was the trouble? A. I never was allowed to have any company, I had no friends at home.

Q. Were you keeping company with men she did not approve of?  
A. Yes; she did not approve of any company I had at all, men or women.

Q. That was the ground of the trouble between you, on account of your company that you kept with men? A. Not that entirely.

Q. That was one of the causes? A. One of them, yes.

Q. That was the reason that you and she did not agree together?  
A. Yes.

Q. She never ordered you out of the house, did she? A. Each time I left she ordered me out.

Q. And it was because of the company you were keeping? A. No, not altogether.

Q. That was one of the causes? A. One of them.

Q. When were you married? A. In June, 1903.

Q. How long did you live in the 8th Street house after you got a place in the Bureau of Engraving and Printing? How many months did you remain there up to the time of your marriage? A. I went to work in August and left in September.

44 Q. Did your father approve of the company you were keeping? A. Yes.

Q. He did not find any fault with you on that account?  
A. Never.

Q. When was the last time you heard them say anything about this property, and that it should be divided? A. It was some time before I left home the last time, I can't remember the date.

Q. Can you remember the year? A. I can't remember the year, no.

Q. How did the conversation happen to come up? A. She would ask him to deed the house over in her name.

Q. Give one special time, if you can. A. I don't remember any particular time.

Q. Can you give the day of the week or of the month, or of the year? A. No.

Q. Was it in the morning or evening? A. Mostly at night, when he was at home.

Q. He was there only in the evening? A. Yes.

Q. Did they ever have these conversations when there was anybody there except you and her? A. No.

Q. It always took place then? A. Yes.

Q. Who would broach it? A. She would.

Q. Always? A. Yes.

45 Q. He seemed to be contented with the property as it was?  
A. Yes.

Q. Your step-mother was a hard working woman? A. No, I can't say she was.

Q. She attended to the business part of the establishment? A. Yes.

Q. She collected the money from the roomers? A. Yes.

Q. Paid the debt on this house? A. I don't know whether she paid it or not.

Q. You don't know anything about that? A. No.

Q. You say that she was of the superior will of the two? A. Yes.

Q. She took the lead in the family affairs? A. Yes.

Q. Did you know whether any part of her money went into this house? A. I don't know; I don't think she had any.

Q. You don't think she had? A. No.

Q. Do you want that to be a positive statement of fact? A. I can't say if she had any, but I don't think that she had.

Q. She always treated your father well, didn't she? A. No.

46 Q. Did not? A. No.

Q. Can you give any instance of her ill usage towards you, what she said? A. Oh, I can remember that she has called me every abominable name she could think of, and has lifted her hands on me, and has pretty nearly killed me.

Q. When was that? A. All the time that I was home.

Q. That was continually so? A. Yes, until after I went to work, and then I stood up for myself a little more.

Q. You mean to say she struck you? A. Very often.

Q. Up to what time did that continue? A. Until I went to work.

Q. You were then 18 years of age? A. Yes.

Q. You mean to say that she punished you while you were a girl of 15 or 16? A. Yes; locked me up in my room for a week at a time.

Q. Did she strike you? A. Yes, very often.

Q. With what? A. With her hand, or anything she could get hold of.

Q. Did that frequently? A. Yes.

47 Q. Did your father ever interfere? A. Yes, but he fared the same as I did; he was afraid to.

Q. You mean to say that she struck him? A. Yes.

Q. Locked him up in his room and kept him a week? A. No, but she scratched his face and threw things at him.

Q. He lived with her up until the time of his death? A. Yes.

Q. When was the last time you saw her do that to your father? A. The last time I was at home, I don't remember just when I left the last time.

Q. When you were there for a short time, you mean? A. Yes.

Q. And you have seen that frequently? A. Yes.

Q. Now, what was your step-mother's language when she would speak about this property, desiring your father to convey it to her, what would she say? A. She would ask him to make it over entirely in her name, and he would refuse to do it.

Mr. LEIGHTON: I think that is all.

Redirect examination.

By Mr. O'DONOGHUE:

Q. What was the character of young men who used to come to see you that your step-mother would not allow to visit you?

48 A. They were of the best character. It was not only men, but any young ladies I had, it was just the same way.

Q. She would allow you to have no company at all? A. None at all; some young ladies she would not let come to the house at all because they were friends of mine.

Q. Of what character were these young ladies? A. Of the very best.

Q. Do you or do you not know that when you were away from home whether boarders were kept at the house? A. She kept roomers for a short time.

Q. Do you mean to say, as you stated in your cross-examination that they kept roomers there only one year during all the time they lived in this house or not? A. That is all that I know of.

Q. What year was that? A. I can't remember what year it was.

Q. Name some of the people who lodged with them? A. Mr. and Mrs. Holmes were the only people I knew.

Q. When were they there? A. I don't know just the year.

Q. About what year? A. Along in 1897.

Q. Did or did not a Mr. Reid? A. Yes, he lived there a short time; he lived with us on East Capitol street and moved with us to 8th street, and lived with us a short time.

Q. What year was that? A. That was in the year they bought the house?

49 Q. In 1891? A. Yes.

Q. Did you make a demand on Mrs. Overand after your father's death for your interest in your father's estate, real and personal? A. Through my attorney for my interest in it.

Q. Did you or did you not receive any allowance or acknowledgment of any rights? A. She refused to make any.

Mr. O'DONOGHUE: That is all.

EDITH A. LANE.

Subscribed and sworn to before me, this 17th day of January 1905.

JESSE C. ADKINS, *Examiner*.

Whereupon, Mrs. MYRA M. HOLMES, a witness called on behalf of the complainant, after being first duly sworn, was examined and testified as follows:

By Mr. O'DONOGHUE:

Q. Where do you reside? A. 507 Rhode Island avenue, northeast.

Q. And are you married? A. Yes.

Q. Your husband's name is what? A. Charles E. Holmes.

Q. You know the complainant and the defendant in this case, Mrs. Lane and Mrs. Overand? A. Yes, sir.

50 Q. Did you ever live with the Overands? A. Yes, sir.

Q. Where? A. At 221 8th street, northeast.

Q. When? A. I think I moved there in the latter part of November in 1896.

Q. And how long did you live there? A. Until about February of 1897.

Q. You lived there with them? A. Yes, sir.

Q. Did you board with them? A. No, sir.

Q. During that time did you or did you not see Mr. and Mrs. Overand? A. Frequently.

Q. Was Mrs. Lane the complainant in this case, living there? A. No, she was not.

Q. What rooms did you occupy in the house? A. The entire second floor.

Q. What rooms did Mr. and Mrs. Overand occupy? A. The first floor?

Q. Did you ever go down to their rooms? A. Very often.

Q. At what time of day? A. In the evening.

Q. What did you do down there? A. Play cards with Mr. Overand when he was sick.

51 Q. What were the relations existing between Mr. and Mrs. Overand?

Mr. LEIGHTON: Question objected to as irrelevant and immaterial.

A. They were friendly at times, and at times very quarrelsome.

Q. What was Mrs. Overand's disposition?

Mr. LEIGHTON: Same objection.

A. Of a very ugly disposition, especially at times.

Q. How did she show that?

Mr. LEIGHTON: Same objection.

A. By her conversation, talking with Mr. Overand or any one that she happened to be with.

Q. Of what temperament was Mr. Overand?

Mr. LEIGHTON: Same objection to that line of questions.

A. Of a very meek temperament.

Q. Which had the stronger will of the two? A. Mrs. Overand.

Q. Did you ever hear them discuss the ownership of this property?

Mr. LEIGHTON: The question is objected to as immaterial, irrelevant, and as tending to control or modify the terms of a deed under which the title to the property was taken, and as in violation of the statute of frauds.

Mr. O'DONOGHUE: It is understood that this objection shall apply to all evidence of this character that may be offered by the complainant.

WITNESS: I don't think I ever did.

52 Q. Did you ever hear them discuss this property, or talk about their property? A. I have never heard Mr. and Mrs. Overand talk about it.

Q. Did you ever hear them talk about their daughter Edith and the provision for her? A. Yes, quite often.

Q. What did you hear them say? A. I have heard Mr. Overand say quite often that he had left her well provided for.

Q. And what did Mrs. Overand say to that? A. Never said much of anything, that is, in his presence, about it.

Q. What were the relations existing between Mrs. Overand and Mrs. Lane? A. Well, they were not at all friendly.

Q. What were the relations existing between Mr. Overand and Mrs. Lane? A. Very friendly.

Q. Did you ever hear Mr. and Mrs. Overand talking about and discussing the way this property should be left after his death?

Mr. LEIGHTON: Objected to for the above reason, and because it is leading.

A. No, I don't think I ever did.

Mr. LEIGHTON: I withdraw the objection.

Q. Do you or do you not remember any time Mr. Overand making a will? A. I remember of Mrs. Overand telling me that there was to be a will made, and that she wanted Mr. Holmes and I to witness it, but she was to call us down on a certain evening,  
53 but the next day she told me that the party to be called in to make the will refused to make it when he saw the condition of the will.

Q. Do you know what the condition of the will was? A. Only what she told me.

Q. What did she tell you? A. She said he was to leave everything to her on his death.

Q. That was the condition he objected to? A. Yes.

Q. Do you know who this party was? A. I did know at the time, but I have forgotten.

Q. What was Mr. Overand's condition then? A. He was in very poor health, and had been for some time.

Q. Do you remember whether he was in bed then? A. Yes, I am positive he was.

Q. Had you heard Mr. Overand make a statement about the provision of his daughter prior to that time? A. Yes; always whenever he spoke of it he said his daughter was well provided for.

Q. How would he say that? A. They would get to talking about her not being at home, and he said he wanted her at home, and different things would bring the subject up.

Q. Did he ever try to have her come home? A. Yes.

Q. Do you know of any occasion on which he tried to have her come home, of your own knowledge? A. Well, I know of one evening we were down stairs playing cards with him, and he requested Mrs. Overand to have Edith come home; he was very sick at  
54 the time, but playing cards, and she said that she had sent for Edith and she would not come; but she told me the next day that she had not sent for Edith and she would not.



Q. Did she give any reason? A. She said she did not want her around.

Mr. O'DONOGHUE: That is all.

Cross-examination.

My Mr. LEIGHTON:

Q. Are your relations with Mrs. Overand friendly? A. They always have been; I haven't seen her for a number of years.

Q. They were friendly at the time you left the house? A. Yes.

Q. I understood you to say you were a married woman; at the time you lived there you were married? A. Yes, sir.

Q. You went there in November, 1896? A. Yes, and staid there until February, 1897.

By Mr. O'DONOGHUE:

Q. Did you stay there two or three months or over a year? A. We were there over a year.

Q. You don't mean the following February? A. No, sir.

By Mr. LEIGHTON:

55 Q. When did you leave? A. We moved there in November, and staid over a year from the next February.

Q. Then you left there in February of 1898? A. Yes.

Q. Have you any independent recollection as to when you went there and when you left? A. We went there the fall—I know it was right after the election, I think of McKinley's first election, I think that is, I know that is right; I think that was 1896.

Q. How would Mr. Overand bring up the subject of his provision for his daughter? A. Asking for her to come home, and that it was funny that she would not come home, that that was her home, and he wanted her to stay there.

Q. Did he say how he had provided for her? A. No, only he had provided for her in his will.

Q. At what time did this conversation you have spoken of with him take place? A. Do you mean the day or year?

Q. I mean the year. A. It was about the time that he was to make his will, it was when he was sick.

Q. When was that? A. It was the fall after we went there.

Q. It was in the fall of 1896, then? A. I don't just exactly remember the dates when we went there?

Q. You were the only roomers in the house during the  
56 time you were there? A. Yes, sir.

Q. The household affairs were attended to by the defendant in this case, Mrs. Overand? A. Yes; she would not allow him to attend to anything; if he said anything she always contradicted him.

Q. You mean she did all the marketing, and attended to everything about the house? A. Yes, sir.

Q. She was the more competent person about the house? A. I don't know that she was the more competent, but she did it.

Q. You don't know whether any of her money contributed towards the payment of this house? A. I don't know anything about that.

Q. Never discussed that with either of them? A. She told me that they owned the house jointly.

Q. Mr. Overand never spoke to you about how they did own it? A. No, I don't think he ever did.

Q. He did not tell you what provision he had made for his daughter? A. No, he did not state what it was.

Q. What was the cause of the trouble between Mrs. Overand and her daughter, the plaintiff in this case? A. I was not there at the time, I don't know.

Q. Didn't you know there was trouble? A. Yes, she told me she would not allow her to stay home.

57 Q. She never told you what was the cause of it? A. No, she did not.

Mr. LEIGHTON: That is all.

Redirect examination.

By Mr. O'DONOGHUE:

— I want to get the dates straight that you went to board with the Overands. You say you went there the day after Thanksgiving in the year in which McKinley was elected? A. Yes, sir.

Q. That was in 1896. How long did you board there? A. We were there until a year from the next February.

Q. That is a year and three months? A. Yes, sir.

Q. So you left there in February, 1898? A. Yes.

Q. Prior to the time when this affair of the will occurred, had you heard Mr. Overand say that he had provided for his daughter? A. One evening I was down there, and he spoke about it.

Q. That was prior to the time? A. Yes.

Q. Mrs. Overand never said to you that she would get the whole of that house?

Mr. LEIGHTON: Objected to as not proper redirect examination, and the question is leading.

58 Q. Did or did not Mrs. Overand ever say to you that the whole of this house would come to her on the death of Mr. Overand? A. No, sir; she did not.

Mrs. MYRA M. HOLMES.

Subscribed and sworn to before me, this eighth day of February, A. D. 1905.

JESSE C. ADKINS,  
*Examiner in Chancery.*

Whereupon Mrs. JENNIE C. LOCKWOOD, a witness called on behalf of the complainant, after being first duly sworn, was examined and testified as follows:

By Mr. O'DONOGHUE:

Q. You have known Mr. and Mrs. Overand and their two daughters since they have been in Washington? A. Yes, sir.

Q. How often did you visit them since they have been in Washington on an average? A. Oh, I couldn't say that; not very often, once in a great while.

Q. How often in a year? A. Well, maybe twice or three times, something like that.

Q. Did or did not Mr. Overand ever call at your house? A. Yes, sir, quite frequently.

Q. How often? Very frequently, you say? A. Yes, sir.

59 Q. Did or did he not ever say anything to you about providing for his daughter? A. Yes, sir.

Q. What did he say? A. He came in to see my husband, and my husband was sick at the time; he came in the basement, and he came down with me and sat down and commenced to talk, and it seems Mr. Overand and his wife had had a little fuss that afternoon, and he said Edie was not at home now, but he had her well provided for.

Q. How long ago was that? A. I should judge it was eight or nine months before he died.

Q. Had you ever heard him make that statement shortly after their coming to Washington, or not? A. No, sir.

Q. Did he or did he not discuss his family affairs on any other visit to your house? A. Yes, sir.

Q. What did he say? A. About them having a fuss and quarrelling together

Q. About who having a fuss? A. Him and his wife.

Q. What did he do? A. He staid at our house a little, and then went home again.

Q. Did he or did he not have any money transaction with you?

A. Yes, sir.

60 Q. What was that? A. One evening he came to the house and said they had another fuss, and he gave me \$17, and said to keep it, that he was afraid his wife would take it away from him; so I kept it two or three days, and then gave it back again.

A. What were the relations existing between Mrs. Overand and her step-daughter, Mrs. Lane, so far — you know? A. I don't think they were very pleasant, always fussing together.

Q. What were the relations between Mr. Overand and his wife? A. Very pleasant as far as I know; I never heard anything different.

Q. How often did you hear him make the statement that his daughter had been provided for?

Mr. LEIGHTON: Objected to as leading.

A. Twice.

Q. When did he first make it? A. One time, I don't know whether my husband was there or not—I can't tell you when it was.

Q. How long after he came to Washington, just about? A. It was about a couple of years before he died when he told me this.

Q. When he first told you this? A. Yes, sir.

Q. What was Mr. Overand's condition of health during the time he was in Washington? A. It has been very poor, off and on; he would be sick for a little while and then go back to work again, but he has not had good health at all.

61 Q. What was the condition of Mrs. Overand? A. Very healthy, so far as I know.

Cross-examination.

By Mr. LEIGHTON:

Q. Mr. Overand was sick off and on ever since you knew him? A. Yes, sir.

Q. Confined to his house a part of the time? A. Yes, sir.

Q. How did he happen to speak of his domestic difficulties to you? A. They had had a quarrel, him and his wife, and he came up to the house.

Q. What was the cause of their quarrel? A. I didn't ask him, but it was on account of Edie.

Q. Their disagreeing? A. Yes, sir.

Q. That was the cause of his differences with his wife? It grew out of that? A. Yes, sir.

Q. Did he ever say to you why Mrs. Overand could not get along with his daughter? A. No, sir; I didn't bother with it.

Q. He didn't go into details as to what provision he had made for his daughter? A. No, sir.

62 Q. He didn't tell you whether it was by deed or will? A. No, sir.

Mr. LEIGHTON: That is all.

Mrs. JENNIE C. LOCKWOOD.

Subscribed and sworn to before me, this seventh day of February, A. D. 1905.

JESSE C. ADKINS,  
*Examiner in Chancery.*

Whereupon the further taking of testimony on behalf of the complainant was adjourned until Tuesday, January 10, 1905, at 4:30 p. m. at the same place.

TUESDAY, *January 10, 1905,*  
WASHINGTON, D. C., 4:30 p. m.

Met pursuant to adjournment at the office of Daniel W. O'Donoghue, Esquire, Century building, 412 Fifth street, northwest.

Present: On behalf of the complainant, Daniel W. O'Donoghue, Esquire; and on behalf of the defendant, B. F. Leighton, Esquire.

Whereupon JESSIE T. GREEN, a witness on behalf of the complainant, after being first duly sworn, was examined and testified as follows:

By Mr. O'DONOGHUE:

Q. Mrs. Green, you have resided in the city of Washington somewhat more than fifteen years past? A. Yes.

Q. Where were you and your husband living in the year 1890? A. 628 East Capitol street, I think.

Q. I want your best recollection? A. Yes, it must have been 1890.

Q. Did you own that house? A. Yes.

Q. Did you occupy it yourself or did you rent it out? A. Well, we rented it and occupied part of it.

Q. To whom did you rent it? A. Mr. and Mrs. Overand.

Q. What did you rent it for? A. \$50 a month.

Q. How did you occupy part of it? A. We had three unfurnished rooms.

Q. Which you rented from Mr. Overand? A. Now, I can't remember about that.

Q. You rented from them? A. Yes, from either Mr. or Mrs. Overand.

Q. And did you board? A. Boarded with them, yes; paid for meals.

Q. How long did that relation continue? A. I think it was less than a year, it was about a year.

Q. And what was the cause of that relation terminating?

64 Mr. LEIGHTON: Objected to as immaterial and irrelevant.

A. Well, one disagreement. I had been in the habit of preparing the baby's food in the kitchen, sterilizing the milk, I had always prepared it and asked the girl to time it, to watch it and lift it off the stove at a certain time, half and a half, or whatever the time was. I went in one day and fixed it, and I said, "Will you take that off at a certain time?" and she said—the girl did not say anything, and the mistress forbade her having anything to do with it.

Q. Who was her mistress? A. Mrs. Overand.

Q. Was she the one you speak about having the disagreement with? A. Yes, she is the one I had the disagreement with.

Q. What followed? A. I found if I could not have the privilege

of preparing the food in the house, I went to the neighbors for it, and Mr. Green asked them for the house.

Q. Then where did they go? A. They went somewhere on Eighth street.

Q. Of what temperament or character was Mrs. Overand at that time?

Mr. LEIGHTON: Question objected to as irrelevant and immaterial.

A. Why, very high tempered.

Q. Can you state anything further about her will power or disposition?

Mr. LEIGHTON: Same objection.

65 A. Well, she seemed to have the controlling power; Mr. Overand was of a pliable nature, and seemed to coalesce with everything she would say, to agree with everything she would say, whether it would be according to reason or not.

Q. And what was his temperament or disposition?

Mr. LEIGHTON: Same objection.

A. Well, kind of easy-going disposition.

Q. Which had the stronger will of the two? A. Mrs. Overand.

Q. What were the relations existing between Mrs. Overand and the complainant in this case, Mrs. Lane, at that time? A. At that time Mrs. Lane was a child of fourteen, and she had the drudgery of the house.

Q. Whom do you mean by she? A. Mrs. Lane.

Q. Who imposed that upon her? A. Her mother.

Q. What do you mean by having the whole responsibility? A. Well, she had all the drudgery of the house to attend to, and I can't remember any word of commendation ever given the child; she was very hard worked; I heard a great deal of fault found with her; for a child of her years she had a great deal to do.

Q. What were the relations existing between Mr. Overand and his daughter at that time?

Mr. LEIGHTON: Question objected to for the same reason.

66 A. Well, I don't know; I couldn't say there was any—he did not seem to take any stand one way or the other; anything for peace's sake, I suppose.

Q. He would agree to it?

Mr. LEIGHTON: Question objected to as leading and irrelevant.

A. Yes.

Q. Do you remember the name of any other boarder at the house on East Capitol street at the time that you were boarding there? A. Mr. Reed boarded there.

Q. Did or did he not remain after the Overands moved from your house? A. No, he went with them.

Q. That is all.

## Cross-examination.

By Mr. LEIGHTON :

Q. How many rooms were there in 628 East Capitol street? A. There were ten rooms.

Q. You occupied the upper floor? A. No, the parlor floor.

Q. The Overands rented the whole house? A. The rest of it.

Q. They rented—— A. The second story and the basement.

Q. They did not rent the whole house? A. No, except you would call it renting the whole house and renting you part of it.

67 Q. Was it understood that the \$50 paid for the whole house?  
A. Yes.

Q. And they sub-let the three rooms on the second floor to you?  
A. Yes.

Q. You did your own housekeeping? A. No, we boarded with them.

Q. Boarded with them. The only cooking you did on the stove—— A. Was sterilizing milk for the baby, that is all.

Q. Preparation of the child's food? A. Yes.

Q. And that brought you into collision with Mrs. Overand?  
A. Yes.

Q. How long did she occupy the house? A. I couldn't remember; it was less than a year, I think; it was not more than a year; I can't remember distinctly; it was in 1890.

Q. You didn't see them after they left — house? A. I met her occasionally, but very seldom, once or twice probably; we were on very pleasant terms when they left the house.

Q. How soon did this incident that you spoke of occur after they rented the house? A. It was towards the time of their leaving.

Q. You shortly demanded the house? A. We demanded the house, yes.

Q. Never had any trouble prior to that with Mrs. Overand? A. No.

68 Q. How many were there in the family of the Overands?

A. There were Mr. and Mrs. Overand and two daughters; part of the time one daughter was away; oh, and her son-in-law was there part of the time.

Q. Mrs. Overand's son-in-law? A. Yes.

Q. Her family then consisted of self, her husband, and her own daughter, and her step-daughter? A. Yes; herself, husband, her daughter and her step-daughter.

Q. There was only one boarder in the house at the time? A. Yes, there were other boarders during that time.

Q. They came and went? A. Yes, temporarily, not for any great length of time.

Q. What was Mrs. Lane required to do? You say she was kept at housework? A. She had the hard part of the work, the kitchen.

Q. What do you mean by the hard part? A. The drudgery, the part a servant would have, the part we don't like to do.

Q. Did you have any other personal altercation with Mrs. Overand? A. No, not any at all.

Q. Your relations after this incident were not pleasant, were they? A. Oh, we were very pleasant before she went away, and every thing was all right. I think she had this violent  
69 temper; she was unfortunate in that respect, and I think she was not always accountable for what she did; I think it was an outburst of temper; after it was over I think she would be all right. She was very nice.

JESSIE T. GREEN.

Subscribed and sworn to before me, this 28th day of January, A. D. 1905.

JESSE C. ADKINS,  
*Examiner in Chancery.*

Whereupon EDWARD W. McRAE, a witness on behalf of the complainant, after being first duly sworn, was examined and testified as follows:

By Mr. O'DONOGHUE:

Q. Where are you employed? A. At the Bureau of Engraving and Printing.

Q. How long have you been working there? A. 22 years.

Q. You were acquainted with Mr. Edmund Overand, the father of the complainant in this case? A. Yes, sir.

Q. How long have you known him? A. Well, 12 years I should say any way.

Q. The 12 years prior to his death? A. Yes, sir.

Q. Did you know him when he came to the city of Washington? A. Shortly after he came here.

70 Q. You worked with him at the Bureau, did you not? A. Oh yes.

Q. Did you see him often or not? A. Yes, I saw him most every evening, coming home with him on the wheel.

Q. You both rode wheels? A. Yes, chums like.

Q. Did you ever visit him? A. On several occasions.

Q. Did he ever discuss his business affairs with you?

Mr. LEIGHTON: Question objected to as irrelevant and immaterial.

A. No, I never encouraged him to talk about his affairs; he started telling me several times, but I did not care to hear much, except that he told me one time he had provided for Edie.

Q. Whom did he mean by Edie? A. His daughter.

Q. When was that? A. Well, I could not say.

Q. About when? A. Four or five years previous to his death.



Q. Did he ever speak to you about buying any property?

Mr. LEIGHTON: Question objected to as irrelevant and immaterial.

A. He bought this property.

Q. Which property? That involved in this case? A. On Eighth street; told me what he paid, \$5,500, for it.

71 Q. Did he ever tell you how he owned it?

Mr. LEIGHTON: Same objection.

A. No; he said he was striving to buy it, and after he finished buying it he made the remark that he thought he would be happy but he was no happier than before. That is the remark he made to me after he had finished paying for the house.

Q. What were the relations existing between Mr. Overand and his daughter Mrs. Lane? A. Well, I should judge—you mean in a friendly way?

Q. Yes. A. He couldn't be any more loving and affectionate with his daughter.

Q. What were the relations existing between Mrs. Overand and Mrs. Lane? A. Not of the most pleasant nature, from what I could understand.

Q. That is all.

Cross-examination.

By Mr. LEIGHTON:

Q. Mr. McRae, did you ever visit the Overands after they purchased the Eighth Street property? A. Yes, sir.

Q. How frequently? A. Well, twice I guess, once or twice, that is about all.

Q. During what years? A. Well, about a year or so ago; I think about two years ago he finished buying the property; just  
72 before he died I visited him twice, and then he had his house clear.

Q. Do you know anything about how he was buying this house, whether it was his own money or whether his wife contributed a portion of it? A. Couldn't say; he never said anything about that.

Q. Never discussed that with him at all? A. No.

Q. You didn't know on what terms he purchased the property, or who furnished the money? A. A building association I believe; he made one or two payments.

Q. When did he tell you he had provided for Mrs. Lane? When you visited him at the house? A. No, it was during a conversation coming from work.

Q. Four or five years before his death? A. Yes.

Q. Did he tell you how he had provided for her? A. No.

Q. No definite statement? A. No.

Q. Did you ever see him in company with his daughter, visit them, were they together; was Mrs. Lane in the house when you visited him? A. Yes, she has been in the house; never been in close quarters like; that is, she was not in our company; I generally went there to see Mr. Overand, and his wife would come in and say a few words; that is about all.

Q. I think that is all, Mr. McRae.

73 Direct examination.

By Mr. O'DONOGHUE:

Q. How much salary did Mr. Overand get a month? A. It was all piece work.

Q. About how much? A. I should think his salary would amount to \$1400 or \$1500 a year.

Recross-examination.

By Mr. LEIGHTON:

Q. From whom did you get the impression that Mrs. Lane was not well treated, was not on good terms with Overand's wife, with her step-mother? A. Well, partly through his conversations with me and what I could observe myself.

Q. Was Mrs. Lane living in the house at the time? A. Not at the time I found all this.

Q. You didn't know why she left? A. I surmised, I didn't know; I judged that the relations between her and the wife——

Q. I don't care for that unless you know? A. I couldn't state that.

Q. That is all.

EDWARD E. W. McRAE.

Subscribed and sworn to before me, this 25th day of January, A. D. 1905.

JESSE C. ADKINS,  
*Examiner in Chancery.*

74 Whereupon, CHARLES E. HOLMES, a witness on behalf of the complainant, after being first duly sworn was examined, and testified as follows:

By Mr. O'DONOGHUE:

Q. Mr. Holmes, what is your wife's name? A. Given name, you mean?

Q. First name? A. Myra.

Q. Did you ever rent rooms at the Overands'? A. Yes, we lived in the second story?

Q. When? A. I don't know the exact dates, I ain't much on dates.

Q. About when? A. It must have been between 1896 and 1898, some place in there.

Q. How long did you lodge there? A. Well, I think we were a little less than two years, that is my recollection.

Q. Where was the house they were living in then? A. I don't remember the number; it was on Eighth street between B and C.

Q. Northeast? A. Yes, sir.

Q. Did you ever hear Mr. Overand discuss his business or financial affairs?

Mr. LEIGHTON: Question objected to as irrelevant and immaterial.

75 A. He never discussed them with me; I have heard him discussing them with Mrs. Overand.

Q. What did he say? A. I never paid much attention; what I heard was simply because I could not help; they were having frequent family disturbances.

Q. What was the nature of their discussion?

Mr. LEIGHTON: Same objection.

A. The only thing I recall anything about—shortly before the will was made there was considerable discussion down there, but as to just what the conversation was I would not undertake to say now, except that there was a disagreement as regards Mr. Overand's daughter.

Q. What was the disagreement about? A. About providing for the daughter, Mrs. Lane.

Q. What attitude did Mrs. Overand take on that point?

Mr. LEIGHTON: Same objection.

A. She was doing most of the talking, and apparently was having her way. That is about the answer I would give to that.

Q. What did she want, do you know?

Mr. LEIGHTON: Same objection.

A. She wanted the will made entirely to her, and she was to provide for the daughter.

Q. You were one of the witnesses to that will? A. Yes, sir.

Q. Who were present when the will was signed? A. Myself, Mr. Overand was in bed in the room; Mrs. Overand and Mr. Burnhardt was present; and I think one other gentleman, but I don't recollect who it was.

76 Q. You say Mrs. Overand was present? A. Yes, sir.

Q. Was Mrs. Lane then at the house? A. No, sir.

Q. Was she living at the house then? A. No, sir.

Q. What was Mr. Overand's condition of health? A. At that time?

Q. Yes. A. Mrs. Overand said that she did not expect him to live.

Q. And what was his condition of health as you gathered from your own observation? A. I imagined he was a sick gentleman; I visited him every evening; naturally stopped in and spoke a kind word to him, and passed on upstairs; I imagined he was very bad.

Q. You say you imagined; you mean that is your opinion from your observation? A. That is right.

Q. Did Mr. Overand read over this paper that you call a will? A. Not in my presence.

Q. Was it read over to him in your presence? A. No, sir.

Mr. LEIGHTON: These questions are objected to as not relevant to the issue we have.

Q. Did he discuss the contents of the will?

Mr. LEIGHTON: Same objection.

A. To some extent it was debated there at the bed-side.

77 Q. What did he say? A. Somebody remarked something about his provision for the daughter, and all I remember is there was some little talk between him and Mrs. Overand, and she had agreed to look after the daughter in the future; as I understood it, he had agreed to let her make the will to herself, and she was to receive the whole of the property.

Q. He was to leave the whole of the property to her, and she was to provide for his daughter? A. Yes.

Q. Was or was not Mr. Overand unwilling to make the will? A. Well, he did not seem to express much concern about it, except this little conversation I have just related.

Q. What was Mrs. Overand's attitude in that regard? A. She was very much concerned in the making of the will, for the reasons stated by her, that she thought he would die.

Q. Did she want it or not? A. She did.

Q. Who took the will after it was signed? A. The last I remember of the will it was in Mrs. Overand's hands. I went upstairs as quick as I could get away.

Cross-examination.

By Mr. LEIGHTON:

Q. Mr. Holmes, you lived there about two years? A. Something less than two years.

78 Q. You rented rooms simply, and didn't take your meals with the family? A. No, sir, we rented unfurnished rooms.

Q. While you were there was Mrs. Lane living at the house? A. No, sir.

Q. She was at that time employed by the Government? A. That was my understanding; I had no means of knowing positively. I understood she worked at the Bureau of Engraving and Printing.

Q. At what time of the day or evening was it that this will was made? A. It was just after dark as nearly as I can remember it; the hour I can't remember.

Q. Who were present at the making of the will? A. Myself, Mr. Overand was in bed, Mrs. Overand, Mr. Burnhardt, and another gentleman was there, but whether he was there when the will was signed I don't recollect.

Q. You were one of the witnesses to the will? A. Yes, sir.

Q. Mr. Overand asked you to witness the will? A. No, Mrs. Overand; I think she asked my wife to ask me, and I consented.

Q. You were not in the rooms at the time the will was being discussed. Where were you when this message was brought to you by your wife? Were you in the same room with Overand? A. No, this was a week previous to the making of the will.

Q. You were asked if you would witness a will which was  
79 to be prepared? A. Yes.

Q. Who prepared the will? A. I understood Mr. Burnhardt did.

Q. You were not present when the instructions for the will were given? A. No, sir.

Q. You don't know anything about that part of it? A. No, sir.

Q. When you were called in to witness the will who were present?  
A. The same parties I related a moment ago.

Q. Was the will signed in your presence? A. I signed it.

Q. Did the testator, Mr. Overand, sign it while you were there?  
A. No, sir.

Q. It was signed already when you went in? A. Yes, sir.

Q. Do you know the cause of the trouble between Mrs. Overand and the complainant in this case? A. Well, I don't, of course, know; I have heard a great deal, but naturally I could not know, because I am not much for mixing in other people's business, and what I have heard is hearsay, of course.

Q. I think that is all, Mr. Holmes.

CHARLES E. HOLMES.

Subscribed and sworn to before me, this 25th day of January  
A. D. 1905.

JESSE C. ADKINS,  
*Examiner in Chancery.*

Mr. O'DONOGHUE: That is all my testimony, Mr. Leighton, except the one witness in Texas.

*Testimony of Two Witness- for Defendant.*

Filed Ap'l 11, 1905.

In the Supreme Court of the District of Columbia.

|                  |   |                    |
|------------------|---|--------------------|
| EDITH A. LANE    | } | Equity. No. 24757. |
| vs.              |   |                    |
| EMMA J. OVERAND. |   |                    |

WASHINGTON, D. C., *March 11th*, 1905,  
Saturday, at 2 o'clock p. m.

Met, pursuant to notice, at the George Washington University hospital, No. 1335 H street, northwest, to take testimony on the part of the defendant in the above-entitled cause.

Present: Daniel W. O'Donoghue, Esq., of solicitors for the complainant, and Benjamin F. Leighton, Esq., solicitor for the defendant; and the examiner.

Whereupon EMMA J. OVERAND, the defendant, and a witness in her own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LEIGHTON:

Q. You are the defendant in this case? A. Yes, sir, I am.

Q. The copy of the deed attached to complainant's bill,  
81 relating to conveying the property in controversy to you and your husband, is signed by Charles Gessford and Elizabeth C. Gessford, and was acknowledged before Clarence L. Alexander, a notary public. State whether or not those persons are now living. A. They are not. They are all dead; those three.

Q. Do you recall where that deed was executed? A. In my house; in the dining-room.

Q. By the term "my house" do you mean the property in controversy? A. No. 221 Eighth street, northeast.

Q. What room? A. The dining-room.

Q. Do you recollect who was present? A. Mr. O. W. Reed and Mr. Alexander, I think Mr. George Gessford, I feel sure, and Mr. Overand, and myself.

Q. Do you know whether or not George Gessford is living? A. I am not sure. I think he is.

Q. Do you know where he is? A. I don't know anything about him at all.

Q. State what took place at the time the deed was executed—whether or not it was read over, and by whom it was executed. A. Well, I don't know that I have a full knowledge of that, but I think

that Mr. Alexander read the deed. I read it myself, and Mr. Overand read it. He read it aloud, and then he took it and looked it over.

Q. It is claimed by the complainant in her bill that there is an error in the deed. What have you to say about that—that it  
82 does not express the intention that you intended? A. Mr.

Overand expected that the deed, as I did, was made out jointly; at his death should all go to me, and at my death should all go to him. That is what we thought, and that is what we expected.

Q. How was this property paid for? A. Well, you mean in the building association?

Q. No, I mean where did the money come from? A. The first payment was \$1,000 paid with my own personal money. I think there was \$3,000 mortgage on the house, and the rest was in notes. I know so little about business, but I know that we paid for it.

Mr. O'DONOGHUE: I might say that I object to Mrs. Overand, being the survivor of herself and her husband, testifying as to transactions that occurred between them; that is, between her and her husband.

Q. From what source did you derive this \$1,000?

Mr. O'DONOGHUE: Well, it is understood that that objection goes all the way through.

Mr. LEIGHTON: Yes; applies all the way through.

Q. (Continuing:) From what source was this money derived that made the first payment on the house? A. I earned it.

Q. What time—prior or subsequent to your marriage? A. Prior to.

Q. Prior to your marriage? A. Prior to my marriage, yes.

Q. How was the residue of it paid? A. Why, he gave me so much a month, and I took boarders and roomers, and paid for the house as the notes were due; paid the notes up as they were due.

Q. Had or had not Mr. Overand accumulated any property  
83 at the time you speak of? A. He had not anything at all.

Q. Had you been married before? A. Yes, sir, I was married before.

Q. Had he been married? A. Yes, sir.

Q. It appears that your husband, prior to his death, executed a will. State what you know about that. A. Well, he always said it was not necessary to make a will, as everything in the deed was all right; but, unbeknowing to me, he went and had the will made out.

Q. The complainant has testified that from the conversations that took place between yourself and your late husband he stated that he thought you should get—that she, the complainant, would get half of the house when he died, and that you would get the other half. State whether or not any such conversation as that ever took place between yourself and husband. A. There was never any such conversation.

Q. State whether or not the subject of the property and the title to the property was ever discussed between you and your husband in the presence of Mrs. Lane? A. No, sir, before no one.

Q. Mrs. Lane says that you very often wanted the property entirely made over into your name. State whether or not that is so. A. That is not so. I supposed it was all right for me.

Q. Mrs. Lane testifies to leaving the house at different times, and she says that it was because you were always so disagreeable  
84 to her that she could not stay at home. Have you anything to say to that? A. I have nothing to say about that.

Q. Well, was that the occasion of her going away, do you know? A. I can't tell what the occasion was of it. She would take offense and go. She was her own boss.

Q. She says the first time she left you refused to get any breakfast until she got out of the house. What have you to say to that? A. Nothing of the kind. There was no such thing ever happened.

Q. Was there or not any trouble or disagreement between you and the complainant? A. Why the same as there would be with my own child; if I interfered with anything that she wanted to do, as she said she would not be interfered with by me; as it was her father's house.

Q. Was there any occasion, while she was living with you, to exercise your parental authority over her, or restraint? A. There was.

Q. What was the occasion of it? A. Oh, what was the occasion—why, keeping the company that she did.

Q. Well, what do you mean by that? A. Well, have I got to say there?

Q. Yes. A. Her company was not suitable company. She always felt, as I was not her mother, there was no need to obey me, or do  
for me.

85 Q. Was that the source of the disagreement between yourself and the complainant? A. Yes, sir.

Q. The chief source? A. Yes, sir, the chief source.

Q. What company was it—what was the character of the company that she was keeping? A. Married man's; married man's; keeping company with a married man.

Q. Was it or not because of your remonstrance with her on that ground the occasion of her leaving the house? A. It was. I remember the occasion that she went to Miller's. Could I say that?

Q. Yes. A. She wanted to be baptised in the Baptist church, and I would not give my consent; that was one thing.

Q. Why? A. Until she did different.

Q. Mrs. Holmes testified to your requesting her and Mr. Holmes to witness the will. Do you recollect asking them to? A. Mr. Overand asked Mr. Holmes, but not Mrs. Holmes.

Q. Did you ever have any conversation with Mrs. Holmes about the will yourself? A. Never.

Q. She states in her evidence that she and her husband were



playing cards with Mr. Overand, and she requested you to have Edith come home. You said that you had sent for Edith and she would not come; that you told her the next day that you had not sent for Edith, and you did not intend to. What have you  
86 to say to that? A. I never played cards. I don't know how to play cards.

Q. Well, what do you say to that statement? A. Never any such statement was ever made by me.

Q. What were your relations with Mrs. Holmes? A. Why, they were pleasant, until just before she went away there was some trouble. It was not with me that she had the trouble, either.

Q. With whom? A. With Mr. Overand.

Q. Mrs. Green testified to a disagreement between you and herself in regard to the use of the kitchen or the stove. State your version of that trouble. A. Why, Mrs. Green would want to use the stove when it would have to be used for dinner, and I objected to it, and she objected to me objecting to her using it.

Q. She states that the complainant in this case was a child of fourteen years, and that she did the drudgery at the time about the house. What have you to say to that? A. She did not. I had a servant; a colored servant. She took care of Mrs. Green's baby most of the time for her, and she paid her for it.

Q. Was there any discrimination in the treatment of complainant and your own daughter? A. Never. My daughter was about three years older than her.

Q. Mr. Reed testifies in respect to taking the title to this property; that it was decided that the house should be in the name of yourself and husband jointly, and that he informed you that you  
87 would be entitled to the house—entire house as a homestead in case Mr. Overand died, and after your death the place would go back to your daughter and then to Mr. Overand's daughter. State whether he ever made such a statement as that to you.

A. He never made any such statement.

Q. He states that after the property in controversy was purchased, that you frequently endeavored to persuade your husband to deed the place to her, claiming that, in case she died, Edith would get half of the place and you would have no home. State whether that is correct or not. A. That is not correct.

Q. State whether any conversation of that kind took place between yourself and husband in the presence of Reed at any time. A. Never, because I thought the deed was all right. We had no such conversation.

Q. Do you know who gave instructions for the preparation of the deed? A. I think Mr. Alexander and Mr. Reed both together talked it over.

Q. He says that he did not advise the parties, that is yourself and husband, to have the deed drawn in the way that when one died the other would take the whole. State whether that statement is correct. A. That is not correct.

Mr. O'DONOGHUE: I object to this whole line of examination-in-chief, because it is leading. I think Mr. Leighton should ask the witness what conversation, if any, took place between her and Mr. Reed.

88 Q. He states that you were not present when the deed was executed. What have you to say to that? A. I was present.

Q. He says that he has repeatedly heard you tell your husband that you would never have married him if you had not believed at the time he was sure to die, and you would get his life insurance money. What have you to say to that statement? A. That is not correct. That is not so.

Cross-examination.

By Mr. O'DONOGHUE:

Q. Mrs. Overand, when did you first learn of this paper that you call a will? A. I can't remember the date. I haven't the least idea of dates; when it was brought to my house to be signed; when they got there in the evening, Mr. Burnhardt brought the will to the house, and then Mr. Burnhardt read it to me.

Q. You were present when it was executed? A. When the will was executed?

Q. Yes. A. No, sir.

Q. It was read to you, then, before it was executed, when he brought it to the house? A. No, sir; it was executed and brought to the house to have the witnesses sign it.

Q. Where was it executed? A. At Mr. Burnhardt's house, the one that drew it up.

89 Q. Mr. Overand went there and executed it? A. He went there and executed it.

Q. And then it was brought to the house to have all the witnesses sign? A. Mr. Holmes and Mr. Pennoyer and Mr. Burnhardt.

Q. And did Mr. Burnhardt sign at your house also? A. Yes, sir.

Q. Where were you when they signed this will? A. There in the dining-room with them, when they signed it.

Q. You knew the contents of it? A. They read it to me. Mr. Burnhardt read it aloud to me.

Q. Mr. Overand was sick then? A. No, sir, perfectly—in perfect health; in good health.

Q. What time of the day was this executed? A. The will executed?

Q. What time of day, I say? A. That the will was executed?

A. Yes. A. That I don't know. It was executed out of the house, you know; I don't know when it was executed.

Q. What do you mean by being "executed"? A. Made up, I reckon; written out.

Q. You mean signed by Mr. Overand? A. No; I thought you meant the will drawn up.

Q. No. I mean when it was signed by Mr. Overand? A. Oh, in the evening. It was all in the evening after supper.

90 Q. To whom was this will given after it was drawn up?

A. He kept it himself. He did not give it to anyone.

Q. Did he give it to you? A. No, sir, he didn't give it to me. He had a drawer where he kept his papers, and he was very methodical about those things, and he put it in that drawer.

Q. Now, you and Mr. Overand—first of all, you had a great deal of influence over your husband, did you not? A. I don't know that I did, any more than any other wife has.

Q. You and Mr. Overand frequently discussed this property, did you not? A. We did not, no.

Q. Never discussed it at all? A. We did discuss it, but not frequently.

Q. What was the discussion about—what was the nature of the discussion? A. Why, he would say there was no need of drawing a will up. I would say: "Why, hadn't you ought to make a will." He said: "No; there is no need of drawing any will. The deed is made up jointly."

Q. And you asked him—— A. (Interposing.) I didn't ask him.

Q. You said—— A. (Interposing.) I said: "Hadn't you ought to draw a will?"

Q. Why did you want him to draw a will? A. Because I was afraid that it was not all right for me.

91 Q. How do you mean you were afraid it was not all right for you? A. Why, Mr. Overand expected the deed, as I did—was to be drawn up jointly, to the survivor should go all; and then in the will, he expected that I would divide—I would make a will; that is what he expected.

Q. Go ahead. A. That I would make a will dividing equally the property.

A. Between whom? A. Between his child and my child. I suppose he expected that. He didn't say that. He laid no laws on me at all.

Q. Have you, as a matter of fact, made any provision for your stepdaughter? A. I have not made any provision for anybody until this is settled. I don't know what to do until this is settled.

Q. Did you not, as a matter of fact, refuse to do anything even before this suit was started? A. Refuse to do——

Q. Make any provision for her? A. I have never been asked to. I could not refuse; I had not been asked. I have never been asked to make any provision.

Q. Didn't I call on you once or twice in reference to this matter, and ask you what share, if any, Mr. Overand's daughter was getting out of this estate? A. Why, I don't see that she would get any, unless I made the will myself afterwards.

92 Q. So you said she would get no provision unless you just chose to give it to her? A. That is what I supposed; it was my privilege.

Q. What year were you married in, Mrs. Overand, to Mr. Overand? A. I could not tell you.

Q. Can't you come somewhere near it? A. Oh, I have not the least idea. I have been married as much as twenty years or more. I can't give it. There is no use of my trying.

Q. When did you come to Washington? A. We came here about fifteen years ago last November, to the best of my knowledge.

Q. And how long had you been married when you came to this city? A. I should judge we had been married seven or eight years.

Q. How much money did you have when you came to this city, if any? A. One thousand dollars of my own.

Q. Where did you keep that money? A. Some of it was in the Bowery savings bank, New York city, and some of it was in the Brooklyn savings bank.

Q. When you came to this city, where did you keep it? A. That is where I kept it, there. It was not brought here until I bought the house. Riggs collected it.

Q. Mr. Reed explained the meaning of this deed to you, 93 did he not? A. He explained that it was made up jointly; to the survivor should go all.

Q. He was the only advisor that you and Mr. Overand had at that time? A. Yes; he was the only one.

Q. He was boarding with you at that time? A. Yes.

Q. How long were you living at this house before you bought it? A. We were not living there when we bought it.

Q. You did not move in then until afterwards? A. Well, we lived there some three or four months before the payments commenced, but we had paid the deposit on the house and moved in. There was some trouble about the deed. Mr. Gessford could not get a clear title to the ground, and we could not settle for it until we had been in there about three months.

Q. That was the only property that Mr. Overand owned up until after making this paper you call a will? A. Yes, sir.

Q. Will you please mention some specific company that you objected to as not suitable for Mrs. Lane? A. Have I got to mention the names?

Q. Yes. A. Well, Mr. Charles Dodge, a married man.

Q. Where did he live? A. He lives southwest somewhere and works in the War Department.

Q. When did he come there? A. He would come to the—I don't know; evenings; come outside the door.

94 Q. I mean what year? A. She would go out with him and be out nights. That is, she didn't come to the house so much as her being out. That is what I call company. She never was refused to have company. She had very little company; very little.

Q. When did he come to the house; what year? A. I don't remember. I can't tell you what year. I don't remember dates.

Q. Can you remember at all—give your best recollection. A. You see, he didn't come in the house. She went with him. That was the company. I didn't say company in the house. I never refused Edie having company. I didn't have to. She didn't have company.

Q. I say, can't you remember the date—about the year—that Mr. Dodge came there? A. I say, he didn't come to the house; she met him outside.

Q. I say, can't you remember the date when you say that he met her? A. No, I don't remember the date at all. There is no use of my trying to think. Mr. Overand has been dead nearly two years, and it was two years before that.

Q. How many years? A. Four or five years, I can't tell.

Q. Four or five years, then? A. Yes, I can't tell.

Q. Was not it longer than that? A. No.

95 Q. What do you know about Mr. Dodge? A. People came down and told us.

Q. You don't know anything of your own personal knowledge wrong about the man? A. Yes, letters that I have found.

Q. Have you those letters? A. I have not.

Q. Do you know the difference between tenants in common and joint tenants? A. I do not. I don't know anything about law at all. I don't know anything about it.

Q. Do you know the effect of a deed made out to a person, his heirs and assigns? A. I do not. I know nothing about it. Joint tenants, I suppose, is when one died the property went to the other; that is all.

Q. When did you learn that. A. Only when the deed to this house was made out.

Q. Mr. Reed explained it to you? A. Yes; he is the only advisor we had.

Q. Do you know the effect of a deed made out to a man and his wife and their heirs and assigns? A. I don't know anything about that.

Q. Except what Mr. Reed told you? A. No, sir, nothing except what Mr. Reed told me. I know nothing about it.

Q. That was all that Mr. Overand knew about it, so far as you knew? A. Yes. That is all, as far as I knew anything about it, unless he consulted others that I didn't know of.

96 Q. Now, if you understood that this deed was so worded that when Mr. Overand died all this property was to come to you, why did you insist upon him making a will? A. I never insisted upon him——

Q. Well, why did you ask him to make a will? A. Because I know nothing about the law. I would not know whether it would all be mine or not. I know nothing about it, but that is what he thought and what I thought.

Q. As a matter of fact, did not Mr. Overand think that his daughter should be provided for? A. I have never heard him say so.

Q. And did not he think, as a matter of fact, that she was provided for? A. No, sir, he did not.

Q. He did not wish her to get anything of that property? A. Why, he told Mr. Burnhardt that he had implicit confidence in me. I suppose he meant by that, and I think Mr. Burnhardt did, that I would do right by her; that he has confidence in me.

Q. So he left it to you to make provision for his daughter? A. Oh, I suppose so. He never said that he wanted any provision made for her, and never mentioned it.

Q. Did he say so in his will—in this paper called a will? A. Not that I know of. I never knew that he did, want any provision made for her. He hoped I would consider her, or something to that effect. You see I haven't seen it for so long I have forgotten it.

Q. Did not your husband, as a matter of fact, state that he  
97 relied upon your honor to do what is right by his beloved and only daughter, Edith? A. Did he ever say that to me, do you mean?

Q. Didn't he state that in this paper that you call a will? A. I don't remember that. I know he mentioned her in it, and hoped that——

Q. And didn't he talk in there about his one-half interest in the real estate? A. No, sir, he did not.

Q. And didn't he say that that was to go to his daughter, Edith, in case you didn't deed it away or devise it away? A. If I did not sell it or deed it away or will it—if I did not make a will or deed it?

Q. (Continuing :) That one-half of his real estate was to go to his daughter? A. If I had not made a will or had not sold the property.

Q. He did not think it was necessary to make that will? A. It seems he did. I didn't know when he made a will. I didn't know he was going to make it. Mr. Burnhardt—they went to Mr. Burnhardt and had it made, and it seems that he did think it was necessary, at least, or he would not have done it.

Q. In order to provide for you? A. In order to provide for me.

Q. Now, do I understand you to say that you did not think the will was necessary? A. That I did not think it was necessary?

98 Q. Yes. A. Why, I knew nothing about the law, and I thought that he and I both should make a will, and he said it was not necessary, and I supposed it was concluded, and, before I knew it, he had the will made out, and, before that I didn't know that he was going to make it.

Q. Didn't you just testify that the will was read to you before it was signed? A. Yes.

Q. So then you did know it? A. Didn't know that it was to be made out, no, sir.

Q. Well, didn't you know it before it was signed by the witnesses?  
A. Why, certainly I knew than that it was made out. I didn't know that the will was to be made out until it was signed.

Q. So you wanted him to make a will, and thought you ought to make a will yourself—that is what I understand to be the substance of your testimony? A. Yes, but he said it was not necessary for me to make a will.

Q. How often did you discuss the matter about making a will?  
A. Oh, very seldom. The property was seldom ever discussed.

Q. But you discussed it sometimes—occasionally? A. Yes, by ourselves.

Q. And you discussed the title to this property by yourselves.  
A. By ourselves, yes.

Q. Never in the hearing of any other? A. No, sir, not  
99 any person at all.

Q. Did you have this thousand dollars saved when you married Mr. Overand? A. Yes, sir.

Q. And you kept it until you bought this property? A. Yes, sir. I had \$700 and I had \$300—I had \$700 in bank, and I had \$300 cash, I earned myself.

Q. You had that from the time you were married until the time you bought this house? A. Yes, sir.

Q. You hadn't added to it in the meantime, or hadn't taken away from it? A. Yes, I had taken away. Not the thousand dollars; I mean my deposits.

Q. You had taken away from your deposits during that time?  
A. Yes, as I needed it.

Q. Mr. Overand was in poor health right along, was he not, for many years? A. No, sir, he was not. He was in good health. He had spells of sickness.

Q. Serious at times? A. No, sir; no, nothing serious. The doctor did not say they were serious.

Q. Your stepdaughter worked at the Bureau of Engraving, did she not? A. Yes, sir.

Q. From the time she was quite young? A. Eighteen.

Q. Did she pay her board at home immediately after she  
100 started to work? A. Yes.

Q. To you? A. Yes. She paid \$12 a month.

Q. Did your daughter pay her board? A. My daughter was married, and if she boarded at home and was at home they paid their board. Her husband paid it.

Q. I mean when she was single she didn't pay any board there?  
A. Why certainly, she did. She never worked but for just a few weeks. After she came here she never worked at all but three weeks, and she paid for during that time.

Q. That was all she paid during the whole time she was single?  
A. Yes, because she never used to work. My daughter paid her board when she worked.

Q. And your daughter never went to work, I understand you to

say, except three weeks? A. Yes, except three weeks, and then she ran away and got married.

Q. When did Mrs. Lane first leave home? A. I can't tell you. She went when she first went to the Millers'.

Q. How old was she then? A. I don't know. She must have been nearly nineteen. It was after she used to work in the bureau. She went to work when she was eighteen, I believe, in the bureau, and it was after she went to work there that she left home.

Q. Did she come back at any time? A. Yes; she used to come back evenings.

101 Q. I mean did she come back to live there? A. Yes.

Q. For any great length of time? A. For quite a little while; I don't know how long.

Q. When did she leave home again? A. I can't tell you. She left a half a dozen times, but, as to dates, I can't tell you.

Q. Well, as a matter of fact, did not Mrs. Lane—did not you have her to do a great deal of the work about the house? A. No, not more than any mother would ask a child to do, helped wash and wipe dishes, something like that. I had a servant, and if I did not I did the work, a part of it, myself.

Q. Did you not, as a matter of fact, make it uncomfortable for her, or disagreeable, something of that kind? A. According to her ideas, I did.

Q. You were right severe in your discipline, where you would correct her? A. She thought so.

Q. You do not deny it? A. I do, decidedly, deny it.

Q. Mrs. Holmes, Mrs. Lockwood and Mrs. Green all have testified that you were very harsh and cruel in your treatment of Mrs. Lane, and that you forced her to do the drudgery of the work, and were very ill-tempered towards this young child—this young girl. Do you mean to say that they are saying what is not so? A. I mean that what they say is not so.

102 Q. They were at different times in your house, were they not, and boarders, or you boarding with them? A. Mrs. Lockwood never was.

Q. She was there to visit, was she not? A. Never. Never visited our house. She came to see Mr. Overand. They were Mr. Overand's friends.

Q. Well, she was in to see Mr. Overand at different times? A. Yes; just called.

Q. Mrs. Green was in—— A. (Interposing.) I lived in her house.

Q. Mrs. Holmes lived in the same house with you? A. She had rooms in my house, yes.

Q. And Mr. Overand worked at the bureau from the time he came to Washington continuously practically, until the time of his death? A. No, sir, he did not. He was out of the bureau for over a year, being out of employment, and was sick.



Q. But, with the exception of that, he worked there continuously ?  
A. Yes.

Q. How much pay did he get a month ? A. He had what he made. There was no particular—he had no particular—what he had I never knew. I never knew how much money he ever made. That I don't know ; I could not tell you.

Q. Do you know where he kept his bank account ? A. He never had any bank account.

Q. Do you know about how much he made a month ? A. I do not. I haven't the least idea. I never knew how much Mr.  
103 Overand made a month. He worked by the piece, and I never once saw his envelope.

Q. You had no children born to you as a result of the marriage with Mr. Overand ? A. No, sir.

Q. There was only one child by a previous marriage ? A. That is all.

Q. And Mr. Overand had only one child by a previous marriage ?  
A. That is all.

Q. How often did you discuss provisions for these daughters ?  
A. It was never discussed between us ; never. We felt that if we looked out for ourselves ; that was our plan. My daughter was married. She did not need it.

Q. But Mr. Overand's daughter did need it ? A. Not that I know of. I don't know that she did. She is married now.

Q. But she was not married until a month or two before Mr. Overand died ? A. I don't know anything about when she was married.

Q. She was married within the last three years, was she not ? A. Yes, sir.

Q. Why was not this property deeded to Mr. Overand alone ?  
A. I can't tell you. Well, yes, I can tell. We made the first payment and I thought it ought to be jointly.

Q. You mean half and half ? A. Half and half.  
104 Q. So that you would have an equal interest with him ?  
A. With him, yes, sir.

Q. Since you were putting up some of the money ? A. Yes, sir.

Q. As a matter of fact, did not Mr. Overand pay for this house altogether himself ? Q. No, sir. Why the money that he gave me—he gave me so much a month.

Q. To run the house and pay the notes off ? A. Yes.

Q. It took Mr. Overand some time before he finished paying for this house—in fact, up to the time of his death ? A. Yes, sir.

Q. You and Mr. Overand sometimes had discussions about Edith and her habits. A. Yes, sir, we did ; decidedly, had discussions.

Q. He would take up for his daughter and you would oppose his actions ? A. No, sir, it broke his heart, and she has seen him lay on the floor and cry and beg me to talk to her, as he was not able to. She has seen that. She knows that he worried about it.

Q. Have you ever gone to call on your stepdaughter, or seen her since she has been married? A. Yes, I have seen her.

Q. Have you ever gone to call on her? A. No, sir; she has never expressed any wish for me to. I didn't think she wanted to see me.

Q. The relations between you and your stepdaughter have  
105 never been very intimate or friendly? A. Oh, yes, before she commenced to get older, we were. She was very fond of me and I was very fond of her until I commenced to interfere with the way that she did. The teacher sent for me, that she had to be taken out of the school because of her conduct in school. Then the trouble commenced. But she was fond of me before that, and I certainly would do the same by her as I would my own child, and only too willingly. Her mother was a very intimate friend of mine, and one of the dearest friends I ever had.

Q. You always discussed business affairs with Mr. Overand, did you not? A. Certainly.

Q. Any deals he was going in, or business affairs he was in? A. Oh, yes; always.

Q. He was guided a great deal by your opinion in such matters? A. I don't think he was always; not always.

Q. Sometimes? A. Sometimes I suppose. I don't know any particular thing.

Q. He deferred to your judgment quite often? A. No, sir, he didn't defer to my judgment. He had his own opinion about things.

Q. He was a strong-minded man, was he? A. Oh, I don't know that you would call him particularly strong-minded, any more than any man would be, when he talks with his wife. He always said  
that he thought I had done well with what I had to do with.

106 Q. Why did you keep this paper which you call a will so long before you filed it after Mr. Overand's death? A. Because I was told by a lawyer it was not necessary to file it. The deeds were all that was necessary. I mean the deed of the house was all that was necessary. No special reason. I was not told to file it. I know nothing about law at all.

Q. If you had not been told that, you would have filed it? A. If I had been told to file it, I would have done it.

Q. I said if you had not been told that, you would have filed it? A. Yes, I suppose I would.

Q. And had it probated? — Yes.

Redirect examination.

By Mr. LEIGHTON:

Q. Mrs. Overand, when Mr. O'Donoghue called on you, after the death of your husband, about this property, what demand upon you did he make in regard to it? A. That if I did not probate that will, he would know the reason why, and the deed to the property had been set aside, and this one could be set aside, and it could be done again.

Q. Did he or not make a demand for a deed of conveyance of the one-half interest in the property, or any interest in the property?  
A. No, sir.

107 Recross-examination.

By Mr. O'DONOGHUE:

Q. You did not offer to give or convey a one-half interest in this house to Mrs. Lane? A. I did not offer?

Q. Yes. A. No, sir.

Q. Or any interest in the real or personal property? A. Not to you, I did not. I can bring friends forward, though, that I have always told what I should do for Edith.

EMMA J. OVERAND.

Subscribed before me this 17th day of March, A. D. 1905.

J. ARTHUR LYNHAM, *Examiner*.

APRIL 5TH, 1905—10 o'clock a. m.

Met pursuant to agreement of counsel at the office of Benjamin F. Leighton, Esq., in the Columbian building, on Wednesday, April 5th, 1905, at 10 o'clock a. m.

Present: Mr. Leighton and Mr. O'Donoghue.

Whereupon EUGENE J. BERNHARD was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

108 Direct examination.

By Mr. LEIGHTON:

Q. Please state your name, occupation and place of residence?

A. Eugene J. Bernhard; I am a piano tuner by trade; residence 646 East Capitol street.

Q. Do you know the parties to this suit, Edith A. Lane, and Mrs. Emma J. Overand? A. Yes, sir.

Q. Did you know the husband of Mrs. Overand? A. Yes, sir.

Q. How long did you know him? A. I probably knew Mr. Overand—well, seven or eight years before his death. I may be mistaken and it may be ten years. You see I don't know when I first got acquainted with him.

Q. Did you have anything to do with the making of the will of Mr. Overand? A. Yes; I made it for him at his request; at least the little boy came up to my house and asked me to come down and see him; and he requested me to write it.

Q. How long was this prior to his death? A. Oh, probably four—five years, I guess. It was several years, anyhow; three or four years.

A. Prior to his death or from this time? A. Well, it was several

years before his death; two or three years or something like that. I don't remember the date, you know. It might have been two years or something like that. I have forgotten. And I drew the will for him before he died. I did not know that till afterwards. I remember the circumstances.

109 Q. Do you remember whether or not he said anything to you as to his purpose in making a will?

Mr. O'DONOGHUE: I object to this unless it was stated in the presence of Mrs. Overand.

A. Why, he said he wanted—well, so as to leave things to his wife in case of his death. That was about the idea.

Q. Who gave you the instructions for making the will? A. Mr. Overand. We had quite a little talk together, the two of us, and I finally drew it according to the way he wanted it. You see he was very hard of hearing and very incoherent. He talked plain enough, but it was hard to get out of him what he wanted.

Q. I will show you what purports to be the will of Edmund D. Overand, dated the 19th day of November, 1897, and will ask you to state whether or not that is your signature (handing paper to witness)? A. Yes, sir; that is my signature; yes, 27 8th street, N. E.

Q. Is that the signature of Mr. Overand? A. Yes. He signed it in our presence. Of course I couldn't swear to his handwriting. Of course he signed, and I signed here. I testify to that. I don't know—I ever saw his handwriting before.

Q. Is the body of that paper in your handwriting? A. It is all in my handwriting.

Q. Where did you prepare it? A. At my home; that is, I prepared this paper at my home. I prepared the original draft at his house.

Q. You prepared the instructions for the will at his house?  
110 A. Yes.

Q. And then you went home and drafted this paper? A. Yes, sir.

Q. From whom did you receive the instructions for the will? A. From Mr. Overand.

Mr. LEIGHTON: I offer the will in evidence and ask the examiner to make a copy of it to put in the record, and the original can be produced at the time of trial, if required.

Mr. O'DONOGHUE: I object to the paper being offered as a will because it has not yet been established.

Mr. LEIGHTON: I offer it as the paper to which he referred and not as a will.

Mr. O'DONOGHUE: Yes.

## Cross-examination.

By Mr. O'DONOGHUE:

Q. Are you a lawyer, Mr. Burnhard? A. I am a member of the bar.

Q. You are a member of the bar? A. Yes. I was admitted to the bar. I am not practicing law.

Q. Was Mr. Holmes present when this will was discussed? A. No.

Q. He was not present when it was discussed? A. Wait; when it was discussed? When it was signed and executed he was present.

Q. Was he present when it was discussed, before it was  
111 signed and executed? A. No, sir.

Q. Wasn't there some discussion about the will even at the time it was executed? A. Between me and Mr. Overand there was.

Q. Was not Mrs. Overand present at the time the will was executed? A. Yes, she was there. She was there when it was executed.

Q. And she was there when the instructions were given? A. She was there when the instructions were given, but she was not immediately around me. She went away; she walked away.

Q. She talked with you about it, did she not? A. Well, I don't know that she had any conversation with me in regard to the will particularly; no, I don't know that she gave me any—I don't think she said anything to me about the will that I can remember particularly.

Q. You don't remember that she did not, do you? A. No. You see—I want to explain that fully. When he sent for me, the little boy, his grandson, or rather Mrs. Overand's grandson came up himself, Roy Marshall, and I think he said, Papa wants to see you. And he would say, Papa or Mama wants to see you. We were very good friends—the whole family, and I went down, and he said he wanted to make a will. Did you know him?

Q. No. A. Mr. Overand is a very good man and a very nice man. I liked him very much, and he would always have a smile and say hello. And he said he wanted to make this will;  
112 and there seemed to me to be some question as to whether he had got her in his mind, as to how the original deed—at least now I am not saying positively he said that to me, but that was the vague impression I got. I did not understand fully that survivorship would apply. And I prepared this will, that is, the rough instructions, and then afterwards brought the will down to him two or three evenings afterwards, or it might have been the next evening, and when he picked up the will he looked at it like this (indicating). First of all I suggested leaving something to Miss Lane. I don't know I said any particular amount. She was then Miss Edith Overand. She was single at the time as near as I remember.

Q. Mrs. Overand was there when this was discussed? A. Yes, I think she was.

Q. Go ahead. A. And he said, No, that is all right; you go ahead. And he said, I want Mrs. Overand—he wanted me to understand that he wanted her to get everything. And I made this remark that sometimes when a person is omitted entirely then they go in and try to have the will broken. And he said, There won't be any trouble about that. He was one of the loud talking men. When I took the will down to him the following evening, the paper that is now here, I told him, Now Mr. Overand, I want you to know that this leaves everything absolutely to Mrs. Overand. Now, I want to tell you Mrs. Overand was not in the house at the time. He and I

went in the house together and it just happened she was out.  
113 Q. When was this? A. An evening or two afterwards when I brought the original down to him, the one you have now. So I brought the will in to him and I made this remark to him. He was looking over it and he nodded his head with approval and with a smile. And I said, Now, this leaves everything to Mrs. Overand absolutely and unconditionally. I don't know I used those identical words but that is the substance. I said, She can will it away and leave the young lady out entirely, or she can sell it and leave the young lady out entirely. And he said to me, That is all right; she will do what is right. And he turned around; and I was sitting about like you are and he was looking at the will and he said, She will do what is right; I have implicit confidence in her. And he said it in a way, as much as to say, you can dismiss that from your mind. And that is all, as near as I can remember, that took place. And a few minutes afterwards she came in. She probably had been out to a neighbor's or somewhere in the neighborhood.

Q. Now, why did Mr. Overand make a will? A. Well, as near as I can conjecture, and this is naturally a conjecture on my part, fearing she would not get what he had without the will; that is all.

Q. What did he mean when he referred to his one-half interest in the property? A. Well, that was my suggestion when I spoke of the deed not carrying survivorship. He said he was not sure they owned the property between them. I did not quite fully understand that. I don't know I saw the deeds then.

Q. Did they tell you how the deeds read? A. He could not explain. He said they had it between them, and I did not know  
114 that survivorship applied to tenants by entireties.

Q. Did they tell you how the deed read? A. I don't think they did. They did not explain fully.

Q. Would you have known if they told you how the deed read, what title they would have taken? A. I don't know at the time I would have known positively. It seems as though somebody else had said something to him and that made some doubt in his mind as to her receiving at all. I know this I did refer to him or her one time, I have forgotten which, of survivorship applying to joint tenancy.

Q. You did not know which this was? A. No, I did not know which. I did not know because I hadn't examined the deeds.

Q. What was Mr. Overand's condition of health when he signed this will? A. Well, outside of the fact that he was very deaf, I presume his health was generally good. I don't know, you see.

Q. Was he not sick at that time? A. Well, if he was I don't remember.

Q. You don't remember that he was not sick? A. No, I don't remember that he was not sick, no. If he was sick I didn't know it. He would probably be sick and be home a few days or a week or something like that. I don't know that either, but I know—

Q. You don't remember that he was not sick, do you? A. No, I don't remember that he was not sick. But he seemed to be well.

He was up and around.

115 Q. Before that, do you remember? A. Yes, I remember him, for when I went to the house to see him he was friendly and sociable and cheerful. That I remember.

Q. Did you advise him as a lawyer, or did you draw up this will as any layman would draw it up? A. We were good friends and they knew I had studied law, and while I was not practicing law at the time—well, it was done more as a friendly act and as a lawyer too. You know how people will sometimes do that.

Q. Did you ever practice law? A. I had an office for a while, but didn't continue it very long.

Q. And you did this more as a friend than as a lawyer? A. Yes, of course—I hadn't held myself out as practicing law. I did not care much about it.

Q. Who took this will after it was executed? Didn't Mrs. Overand take it? A. Well, she may have taken it. That I cannot tell you, no. I cannot remember that, because as I say, it has been several years. I made the remark in the beginning that it has been several years. I don't know whether she did or not. I would not like to say she did and I would not like to say she did not.

EUGENE J. BERNHARD.

Subscribed and sworn to before me this 11th day of April, A. D., 1905.

J. ARTHUR LYNHAM, *Examiner*.

Whereupon Mr. Leighton announced his testimony closed.

116 NOTE BY THE EXAMINER.—The following is a copy of the will of Edmund D. Overand on file in the office of the register of wills, District of Columbia, made by the examiner agreeably to the request of counsel contained on page 32 of the record:

In the name of God. Amen.

I, Edmund D. Overand, of the city of Washington, D. C., being at the present time in good health and of sound and disposing mind, and capable of making a valid contract, knowing the uncertainty of

life and the certainty of death, do now make, publish and declare this, my last will and testament, revoking all others by me heretofore made.

1st. I bequeath my spirit unto God who gave it, and my body to the earth from whence it came, and I direct that my body be buried decently, and that my funeral expenses be paid out of my estate as soon as my executrix hereinafter named might find convenient.

2nd. I give and bequeath all my property, real, personal and mixed, to my beloved wife, Emma J. Overand, — rely upon her honor to do what is right by my beloved and only daughter, Edith A. Overand, and in case my beloved wife should die without leaving any will, or without having sold my real estate, then it is my desire, that my undivided one-half interest in real estate, and one-half of the whole of my personal estate, shall go to my aforesaid daughter Edith.

117 Having full confidence in my beloved wife, Emma J. Overand, I now constitute and appoint her my executrix of this my last will and testament, and direct that no bond be required of her for the faithful performance of the duties of that office.

In testimony whereof I hereunto set my hand and seal this 19th day of November, A. D. 1897.

EDMUND D. OVERAND. [SEAL.]

Signed, sealed, declared and published by the said Edmund D. Overand, as and for his last will and testament, in presence of us, who, at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

CHAS. E. HOLMES,

*Residence, 221 8th N. E.*

WILLIAM A. PENNOYER, JR.,

*Residence, 33 7th N. E.*

EUGENE J. BERNHARD,

*Residence, No. 27 8th St. N. E.*

118

*Decree.*

Filed May 17, 1905.

In the Supreme Court of the District of Columbia, Holding an Equity Term.

|                  |   |                             |
|------------------|---|-----------------------------|
| EDITH A. LANE    | } | Equity. No. 24757, Doc. 55. |
| vs.              |   |                             |
| EMMA J. OVERAND. |   |                             |

This cause coming on to be heard on the pleadings and evidence filed herein and having been fully argued by the solicitors for the respective parties, upon consideration thereof, it is by the court this



17th day of May, A. D., 1905, adjudged, ordered and decreed that the deed in fee involved in this cause dated the 21st day of May, 1891 and recorded the 22nd day of May, 1891, in Liber 1574 at folio 376 of the land records of the District of Columbia, from Charles Gessford and Elizabeth Gessford, his wife, to Edmund D. Overand and Emma J. Overand, his wife, conveying the following described land and premises situated, lying and being in the city of Washington, in the District of Columbia, and distinguished as and being lot numbered eighty-eight (88) in John G. Slater's subdivision of lots in square numbered nine hundred and seventeen (917) as said subdivision is recorded in the office of the surveyor of the District of Columbia in Book 18 page 43, to said grantees, their heirs and assigns in fee-simple, be and the same is hereby corrected and re-

119 premises were conveyed to said grantees, their heirs and assigns as tenants in common and not as joint tenants or tenants by the entireties; and it is further adjudged, ordered and decreed that all the right, title and interest both at law and in equity or otherwise of an undivided moiety of the aforesaid land and premises subject to the dower interest of the defendant, Emma J. Overand, be and the same is hereby declared to be vested in the complainant, Edith A. Lane, in fee-simple as the only heir at law of the said Edmund D. Overand, deceased, as tenant in common with the defendant, Emma J. Overand, the owner of the other undivided moiety of the aforesaid land and premises: And it is further adjudged, ordered and decreed that the defendant, Emma J. Overand, do within ten days from the date hereof execute and deliver to the complainant, Edith A. Lane, a good and valid deed conveying the aforesaid undivided moiety in the aforesaid land and premises to the complainant, Edith A. Lane, in fee-simple, as tenant in common as aforesaid, subject to the dower interest of the defendant, Emma J. Overand, as aforesaid: And it is further adjudged, ordered and decreed that in case the said defendant, Emma J. Overand, fails or refuses to execute and deliver the deed hereinbefore ordered within the time specified, then Jesse C. Adkins be and he is hereby appointed a trustee of this court for the purpose of executing and delivering said deed and he is hereby authorized and directed to execute and deliver the same in that event and to convey by said deed all the right, title and interest in and to the aforesaid undivided moiety of the aforesaid land and premises subject to the dower interest aforesaid, to the complainant Edith A. Lane, in fee-  
120 simple: And it is further adjudged, ordered and decreed that the defendant pay the costs in these proceedings.

THOS. H. ANDERSON, *Justice*.

From which decree the defendant in open court appeals to the Court of Appeals of the District of Columbia and the court fixes the bond to supersede the decree in the sum of two hundred (\$200) dollars to be given by the defendant.

THOS. H. ANDERSON, *Justice*.

*Memorandum.*

May 19, 1905.—Appeal bond filed.

*Order Extending the Time for Filing Transcript of Record.*

Supreme Court of the District of Columbia.

MONDAY, June 26th, 1905.

The court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

\* \* \* \* \*

EDITH A. LANE }  
                   vs.        } No. 24,757, Equity Docket 55.  
 EMMA J. OVERAND. }

121       On motion of complainant's counsel, B. F. Leighton, Esq., it is this 26th day of June, A. D. 1905, ordered that the time for filing the record in the Court of Appeals, on the appeal taken by the complainant herein, be and the same hereby is extended to July 15th, 1905.

WENDELL P. STAFFORD, *Justice.*

122       Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }  
       *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 121, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 24,757, in equity, wherein Edith A. Lane is complainant, and Emma J. Overand is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 12th day of July, A. D. 1905.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1582. Emma J. Overand, appellant, vs. Edith A. Lane. Court of Appeals, District of Columbia. Filed Jul- 12, 1905. Henry W. Hodges, clerk.

